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Held, That the attorney had his action against the agent personally for the value of his services.

And that his petition would not be held bad on demurrer for misjoinder, because it included counts for services in the different attachment suits; said suits appearing to have been brought under the same employment.

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B.

BILLS AND NOTES.

1. *Administration—Bills and notes—Suits upon, by administrator of administrator.*—Where a note was made to an executrix in her representative capacity, her administrator, in the event of her death, may sue on the note in his own name.—Block, adm., vs. Dorman, 31.

2. *Note given in extinguishment of debt, equivalent to cash, when.*—A note received in full satisfaction and absolute payment of a debt has the same effect in extinguishing the interest as if payment had been made in cash.—*Id.*

3. *Limitations, statute of—Note—Interest—Payment of by one maker—Effect of, as to others.*—Payment of interest by one of several promisors in a note, before the statute of limitations attaches, takes it out of the statute as to the others.—*Id.*

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4. *Bills and notes—Note given payee for third party, without consideration as to payee—Trusteeship, etc.*—Where it was agreed, at the time of the execution of a note, that either it or its proceeds should go to a third party, in such case the latter would be the substantial creditor; and if the payee gave no consideration for it, he would be a mere naked trustee, and neither he nor his assigns could set up an interest against the real beneficiary.—Callaway vs. Johnson. 33.

5. *Garnishment—Note—Payee, agreement of as to maker—Estoppel, etc.*—In garnishment proceedings wherein the maker and payee of the note were both made defendants, if the payee, by an agreement or arrangement, had the garnishment proceedings dismissed as to him, with the understanding that the judgment should be taken against the maker, he could not afterward be heard alleging that he was not bound thereby.—*Id.*

6. *Bills and notes—Maker—Signature on back of note, legal effect of—Parol evidence.*—The signature on the back of a note, of one who is neither payee nor indorsee, is *prima facie* that of maker. But this presumption may be repelled by parol evidence. It may be thus shown that in fact he signed only as guarantor.—Seymour vs. Farrell, 95.

7. *Notes and bills—Agency—Descriptio personæ.*—A note made to "C. H. Morris, agent," is payable to him personally. The word agent after his name is merely *descriptio personæ.*—Toledo Agricultural Works vs. Hewing's adm., 128.

8. *Bills and notes—Signature on back of note—Effect of parol evidence as to.*—When one writes his name on the back of a note of which he is neither payee nor indorsee, in the absence of extrinsic evidence, he is to be treated as the maker thereof. But parol evidence is admissible to show that he did not sign as maker but as indorser. (Kuntz vs. Temple, 48 Mo., 71)—Mammon vs. Hartman, 168.

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BONDS.

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2. *Choses in action—Counties—Bonds, ownership of.*—Bonds of the United States, of countries, &c., are not merely choses in action, but are personal property, and have their *situs* wherever they may be placed for safe keeping, and a county may be the owner or the lawful custodian of them.—State vs. Cunningham, 479.

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BONDS, ATTACHMENT; See Attachment, 5.
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C.

CALLAWAY COUNTY BONDS.

1. *Railroads—Louisiana and Missouri River Railroad—Charter—Act of 1868 amending charter invalid.*—The act of 1868 which professed to amend the charter of the Louisiana and Missouri River Railroad was illegal and void, and did not constitute a new charter of said road. (State vs. Saline County, ante p. 350 affirmed.) State *ex rel., etc.*, vs. Callaway County Court, 395.

2. *Injunction—Subscription—Railroads—Negotiator of bonds—County Courts—Parties.*—In an action by injunction when the petition alleges that a County Court had made an unlawful subscription to a Railroad, and had delivered a quantity of bonds issued to pay such subscription into the hands of an agent to be negotiated, and had levied a tax to pay said bonds and the interest thereon; and the petition prayed that the subscription be cancelled, and that the County Court and the Justices thereof and said agent be restrained from commission of said acts: *Held*, that the Railroad and the agent for the negotiation of the bonds as well as the County Court and its Justices were proper parties to the action.—*Id.*

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CLERKS OF CIRCUIT COURT.

1. *Clerk of Circuit Court—Account for bunching and labeling old papers—Mandamus.*—Under a proper construction of the statute (W. S., pp. 258–9, § 11 and pp. 1136–7, § 12,) the Circuit Court has no authority to audit and allow an account presented by the clerk therof for "properly bunching, labeling and brieving the old papers in the office." And mandamus will not lie against the County Court to compel the payment of such accounts although audited by the Circuit Court.—State *ex rel.*, etc., vs. Livingston County Court, 537.

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1. *Constitution, section, 27 article IV—Construction of—General and special laws—Legislature, discretion vested in.*—The act "to authorize the County Courts of Madison, Wayne and other counties to levy a special tax for the purpose of paying the debts of said counties," is not in conflict with section 27, article IV, of the State constitution, which provides that "the general assembly shall pass no special law for any case for which provision can be made by general law." The question whether any given case can be provided for by a general law, or whether a special law is necessary, is a question solely for the Legislature to settle, and cannot be determined by the Supreme Court. (See State *ex rel.*, etc., vs. Boone County Court 50 Mo., 317;) State *ex rel.*, Robbins vs. The CountyCourt of New Madrid County, 82.

2. *Constitution, special acts, when necessary—Legislature must determine—Jasper County Common Pleas Court.*—The act creating the Common Pleas Court of Jasper county, (Sess. acts, 1869, p. 170,) is not in conflict with § 27, Art. 4 of the State Constitution, by reason of being a special enactment. Whether such a court can be provided for by a "general law," is one to be determined by the legislature.—Hall vs. Bray, 288.

See Judgments, 7; St. Charles, City of, 1; Statute, construction of, 1, 2.

CONTRACTS.

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See Agency, 1; Bills and Notes; Conveyances; Frauds, statute of, 1; Guardian and ward, 1; Husband and wife, 8; Land and Land Titles, 3, 4; Mechanics' Lien, 1, 3, 4; Mortgages and Deeds of Trust; Practice civil, pleading, 7, 8, 15; Sales; Sheriff's Sales; Uses and Trusts.

CONVEYANCES.

1. *Acknowledgment—Defective—Equity will not interfere to correct.*—Where a notary fails to set forth in a certificate of acknowledgment, the facts necessary to constitute a good certificate, he may correct his certificate if the facts will warrant him in so doing, and he may be compelled so to do by *mandamus*. But a court of equity has no jurisdiction to correct such mistakes.—Wannall vs. Kem, 150.

2. *Deeds—Ambiguatas latens—Attempt to incorporate new words when deed is intelligible.*—One Terry owned certain land in E. half N. E., quarter sec. 36, etc. The land conveyed by him, was described on the deed as in S. W. quarter, sec. 36, etc., where in fact he owned no land. In ejectment for the land, *held,* that it was incompetent to show by parol testimony that the deed was designed to transfer a tract in S. W. quarter "of Terry's land," in sec. 36, etc. This is not a case of latent ambiguity which may be explained by parol evidence; but it is an attempt, where the description contained in the deed was plain and intelligible, to introduce new words into it in order to show an intention not apparent on its face.—King vs. Fink, 209.

3. *Vendor's lien—Security—Waiver—Estoppel.*—The recital in a conveyance of land that "The balance of the purchase money, to wit: $1,680 is secured to be paid" is not a waiver of the lien of the vendor, nor does it estop him from asserting it.—Major, administrator of Lisle vs. Bukley, 227.

4. *Deeds—Habendum—No essential part of.*—The *habendum* clause is no essential part of a deed. It may be entirely rejected if repugnant to the other clauses of the conveyance.—*id.*

5. *Warranty, covenant of—Suit on—Eviction unnecessary, when.*—In a suit on a covenant of warranty where plaintiff holds by a title adverse to defendant, he will not be compelled to show an *eviction* in order to recover. If he prove that the title purchased was a good one and superior to his own, and that it was purchased at a fair and reasonable price, that is sufficient. The measure of damages in such a case is the amount paid for the outstanding title, if it does not exceed the price originally paid for the land.—Hall vs. Bray, 288.

6. *Wills—Life estate of widows—Sale of land by—Power—Execution of.*—By the terms of the will, a widow was vested with a life estate in all the property of the testator, and with a power to alienate any of it in payment of the debts of the estate, and to defray necessary expenses of the family. The widow also owned a small undivided interest in the land, in fee simple. The will also named her as executrix. *Held,*

1st. In the execution of the power she need not describe herself as executrix. Her power to sell would arise from the general trust reposed in her and not simply from her position as executrix.

2nd. Conveyance of land by her which contained no reference to the will or the power of alienation conferred by it, or to any thing from which the power might be inferred—would operate to pass only her life estate and her individual undivided interest in the land, and would not execute the power by transfering the fee simple title to the whole land sold, nor would such be the case even if the deed contained covenants of seizin and warranty. Owen vs. Switzer, 322.

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7. *Acknowledgment, taken by grantee, void.*—The acknowledgment of a deed of trust taken by the grantee therein as notary public, is void.—Dail vs. Moore, 589.

8. *Evidence—Deed—Proof of execution.*—A deed cannot be read in evidence without some proof of its execution.—*Id.*

9. *Trustee—Acknowledgment—Descriptio personæ.*—The acknowledgment of a deed by a trustee who signed the instrument as trustee, is not void because the certificate describes him simply by his individual name without adding his title.—*Id.*

10. *Conveyance from father to son—Removal, consideration, what sufficient.*—The removal of a son to certain land, on the faith of a promise by his father to give him the land, the father being at that time in good circumstances; and the fact that afterwards the son parted with said land for the purpose of effecting the exchange, is a valuable consideration to support a conveyance by the father to the son of other lands; even though at the time of the latter conveyance, the father had become insolvent.—Rumbolds vs. Parr, 592.

See Evidence, 10, 11; Revenue, 7.

CORPORATIONS.

1. *Corporations—Bills and notes—Agent, authority of to draw bills, may be conferred by corporation by parol.*—The officers of a corporation, unless prohibited by the charter, may confer authority upon its agent to draw and execute bills of exchange on behalf of the compnay. No action in writing on the part of the board of directors is necessary in order to vest such authhrity in the agent.—Preston vs. Mo. and Pa, Land Co., 43.

2. *Corporations, private—Shares, calls on—Stockholders and directors liability of—Estoppel.*—Where a person participates in all the proceedings in creating a corporation, and in increasing its stock and making the calls on the stock subscriptions both as stockholders and director, in a suit against him to compel payment of such calls, he is estopped to deny their validity.—Kansas City Hotel Co. vs. Harris, 464.

3. *Corporations—Attorneys—Employment of—Board of Directors.*—The managing officers of Corporations have power to employ attorneys without any special authorization to that effect from their board of directors.—Turner vs. Chillicothe and D. M. C. R. R. Co., 501.

3. *Corporations—Chief place of business—Jurisdiction—Attachment.*—In suit against a foreign corporation, where it is not alleged or any where shown that defendant had its chief office or place of business in this State, the petition will be dismissed for want of jurisdiction.—Middough vs. St. Joseph and Denver City R. R. Co., 520.

5. *Corporations, foreign—Service upon in this State.*—Under a proper construction in this state (W. S., 294, § 2,) writs may be served on foreign, in the same manner as upon domestic corporations. That statute is broad enough to cover both cases.—*Id. per* ADAMS, Judge, dissenting.

6. *Corporations, foreign—Answer—Waiver of defective service.*—Where a foreign corporation puts in an answer to a petition against it, such appearance waives any defect which there may have been in the service of the summons.—*Id.*

See Corporations, Municipal; Railroads.

CORPORATION; MUNICIPAL.

1. *Corporations, municipal—Damages to persons—Insecure streets—Dangerous excavations.*—Municipal corporations are bound to keep their streets and highways in a proper state of repair, and are liable in damages for negligence in suffering their streets to remain in a dangerous condition by which an injury results.—Bowie v. Kansas City, 454.

COSTS.

1. *Justice's Court—Appeal—Security for Costs—Non-residence.*—On appeal from

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a justice, appellant asked that respondent be ruled to give security for costs, on the ground that he had, pending the appeal, become a non-resident. Rule not granted. (Wag. Stat., 342, 343.)—Button vs. Han. & St. J. R. R. Co., 153.

2. *Costs, criminal—Indictment—Sentence to a county jail—Costs paid by county.*—Under an indictment for murder, defendant was found guilty of man-slaughter in the third degree, and sentenced to imprisonment for one year in the penitentiary. Afterwards the verdict having been set aside, and a new trial granted he pleaded guilty to manslaughter in the third degree, and was sentenced to confinement in the county jail, and to a fine of one hundred dollars. The prisoner being insolvent, held that the county was liable for all the costs. (See W. S., pp. 348–349, §§ 1, 2.)—State ex rel., Simms vs. Carpenter, 555.

See Clerk of Circuit Court, 1.

COUNTER-CLAIM; See Practice civil, pleading.

COURTS COUNTY.

1. *County warrants—County court cannot discount.*—A county court has no power to discount its warrants in payment of a county debt. Chapter 52 of the Statutes of 1865 concerning public roads (Gen. Stat. 1865, p. 290,) gives no such power. The statute invests the county court with the authority, when the county is a party, to audit, adjust and settle all accounts, and to order the payment out of the county treasury of any sum of money found due by the county; and the only means they can resort to upon such adjustment, is to order the clerk to issue a warrant; when this is done, their power is extinct, and they have no right to give an additional sum to raise the warrants to a cash standard.—Bauer vs. Franklin County, 205.

2. *County Courts—Jurisdiction of, in trespasses of deceased.*—County Courts have jurisdiction of demands against the estate of deceased persons, based on alleged trespasses by the deceased. (See Act concerning the judicial power of Courts R. C., 1855, p. 534–5, § 15; see also W. S. p. 440–7.)—Mayberry vs. McClurg, 256.

See Administration; Callaway County Bonds; Courts Probate; Guardian and Ward, 2, 3, 4, 5, Roads, 1, 2; Saline County Bonds; School and School lands, 3.

COURTS; JASPER COMMON PLEAS.

1. *Constitution, special acts, when necessary—Legislature must determine—Jasper County Common Pleas Court.*—The act creating the Common Pleas Court of Jasper county, (Sess. Acts 1869, p. 170,) is not in conflict with § 27, Art. 4, of the State Constitution by reason of being a special enactment. Whether such a court can be provided for by a "general law," is one to be determined by the legislature.—Hall vs. Bray, 288.

2. The act of February, 1870, (Sess. Act, 1870, p. 200, § 15,) authorizing the appointment by the Judge of Jasper Common Pleas Court of an attorney at law to act as judge *pro tem* in certain cases, is not unconstitutional as failing to provide an oath of office to be taken by the attorney before trying such cause. (See Const. Art. II, § 13.) Nor is it contrary to that provision of the constitution providing for the establishment of different courts and tribunals, (Const. Art. VI, § 1.) Under that instrument the legislature would have no power to authorize the substitution of an attorney to sit in a particular case in the Circuit Court; but such restriction does not extend to an "inferior tribunal" like the Jasper Court of Common Pleas.—Harper vs. Jacobs, 296.

COURT, PROBATE; See Administration; Guardian and Ward, 2, 3, 4, 5, 6.

CRIMES AND PUNISHMENTS; See Practice, Criminal.

CRIMINAL LAW; See Practice, Criminal.

CROPS; See Dower, 1; Landlord and Tenant, 1.

D.

DAMAGES.

1. *Damages—Railroads—Negligence—Burden of proof.*—In an action against a

DAMAGES.—Continued.

railroad company, for personal injuries to plaintiff, the burden is not on plaintiff to aver affirmatively that he was at the time exercising due care, and was himself without negligence, contributing to the injury. Negligence in the plaintiff is a mere defense to be set up by the answer, and shown like any other defense.—Thompson vs. North Missouri R. R. Co. 190.

2. *Damages—Land—Sale of—False Representation.* Semble, that persons conspiring together, by their false and frandulent representations, causing land to be sold at a sacrifice, will be liable in damages for the injuries done.—Wickerham vs. Johnson, 313.

3. *Damages—Trespass—Damages when compensatory only.*—In an action of trespass, unless the offense be committed in a wanton, rude or aggravated manner, indicating oppression, malice or a desire to injure, the damages should be compensatory only, and where the evidence wholly fails to show any of these elements, a judgment including vindictive damages will be set aside on appeal. (Franz vs. Hilterbrand, 45 Mo., 121).—Engle vs. Jones, 316.

4. *Damages—Injuries to land from building of sewers—Party entitled to compensation, etc.*—Where in consequence of the negligent manner of constructing a sewer a private lot flooded with water, the city will be liable for the resulting damage.

Such a work is not a matter of supreme necessity involving the safety of the people. Hence the maxim "*salus populi, suprema lex*" can have no application. 2. The right to the use of the street is a property interest, and the lot holder is as much entitled to protection in it as in the lot itself. Hence the land owner will be entitled to compensation for the resulting injuries under § 16, art, I of the State Constitution. (City of St. Louis vs. Gurno, overruled;) —Thurston vs. City of St. Joseph, 510.

5. *Damages—Sewers, injuries to land caused by building of—Party injured entitled to damages.*—Where the work of constructing sewers was of such a character as to require the exercise of judgment as to the time when and the mode in which they should be undertaken, and the best plan which the means at the disposal of the corporation rendered it practicable to adopt, the corporation would not be responsible for a defect or want of efficiency in the plan adopted.

But the work of constructing sewers is ministerial in its character; and when a corporation undertakes this work, it is responsible in a civil action for damages caused by the careless or unskillful performance of the work. So it is the duty of corporations to keep sewers in repair, and if they are negligently permitted to become obstructed or filled up so as to cause the water to back flow and do injury, there is a liability on the part of the corporation having control over them.

But where corporations act under authority conferred by the Legislature, and exercise reasonable care and skill in the performance of such work, they are not answerable to adjoining owners, whose lands are not actually taken, for consequential damages to their premises, unless there is a provision to that effect in the charter of the company or in some statute creating the liability.—*Id.* per Wagner, Judge.

See Agency, 4; Corporations, Municipal, 1; Railroads, 7; Replevin, 1.

DEFAULT; See Judgments, 6.

DEPOSITIONS; See Evidence, 4.

DESCENTS AND DISTRIBUTIONS,

1. *Distribution of estate—Testimony of the widow, etc.*—In a proceeding for the distribution of the estate of a deceased person, his widow is a competent witness, the deceased having no interest in the controversy; but her testimony as to confidential conversations with her husband should be excluded on the ground of public policy.—Spradling vs. Conway, 151.

DESCRIPTIO PERSONÆ; See Bills and Notes, 7; Conveyances, 9.

DIVORCE.

1. *Witnesses.—Divorce.—In suits of, husband and wife may testify, when.*—Under § 1 of the act concerning witnesses, (Wag. Stat. 1872) where husband and wife are opposing parties, as in suits for divorce, they are competent as witnesses to give evidence as to all matters except communications made by the one to the other.—Moore vs. Moore, 118.

DONATIONS TO CHARITABLE USES.

1. *Donations to charitable uses—Cannot be recalled.*—A testator donated certain lands to the Methodist Episcopal Church South. A church built thereon having burned down—*Held*, that his heirs could not reclaim the lands.—Goode vs. McPherson, 126.

DOWER.

1. *Dower—Widow, title of, to growing crop.*—Under the statute law of Missouri, where the widow has the dower assigned to her, the growing crop on the land of her deceased husband goes to his executor or administrator and not to the widow.—Whaley vs. Whaley, 36.

2. *Dower—Action for—Possessions of deceased husband—Seizin, etc.*—In suit for dower, evidence that the deceased husband of the claimant possessed the lands, claiming them as his own, and left his family there at the time of his death is sufficient to make out a *prima facie* case of seizin in the husband.—Duke vs. Brandt, 221.

3. *Dower—Contract for purchase of land—Possession—Seizin—Vendor's lien, etc.*—Certain school lands were sold by order of the County Court; the purchaser giving his note to the county for the purchase money and receiving the usual certificate of purchase. (Wag. Stat., 868, § 7.) A. bought the land from the original purchaser, lifted the note and substituted his own. He died in possession, leaving the whole of the note still unpaid. At administrator's sale, B. purchased the land and paid the amount of a judgment obtained on the note of A. *Held*, that B. might be subrogated to the rights of the county, and enforce the vendor's lein against the land. But that the title thereto would remain in the heirs of A., subject to be defeated by sale under the vendor's lien; but that aside from such divestiture, there was in A., an equitable seizin, such as would entitle his widow upon payment out of his assets of the amount of the note, to her dower in the land, under § 1 of the dower act. And this right of dower would still remain notwithstanding the fact that no money had been paid by the deceased husband to the county, and no sale had been made by the county to him as contemplated by §§ 2, 3, of said act.—*Id.*

4. *Dower—$400 worth of personal property widow's absolutely.*—The four hundred dollars worth of personal property to which the widow is entitled under the administration law, (W. S. 88, § 35,) is hers absolutely; is part of her dower and does not depend on her election.—Cummings vs. Cummings, 261.

5. *Dower—Widow, application of for $400 worth of personal property—Sale of property—Claim of widow on proceeds.*—There is no formality about the application of the widow for the $400 worth of personal property to which she is entitled under the administration act. (W. S., 88, § 35.) It need not be in writing. After its sale she will still be entitled to $400 of the proceeds, provided she made her application prior to its distribution or payment for debt. The words "appraised value," used in that section, were only designed as a means of valuation in case the widow chose specific articles.—*Id.*

6. *Dower—Personal property—Notes and bonds.*—The "personal property" to which the widow is entitled under the administration law (W. S., 88, § 35,) includes notes and bonds as well as property of the description ordinarily sold at administrator's sale.—*Id.*

7. *Dower—Election—Seizin—Attachment.*—Where a widow, in lieu of her dower interest in one-third part of the lands of which her husband died seized, elects to take absolutely a child's share in such lands, as prescribed by statute (W. S., 540, § 11), she thereby becomes seized of an undivided interest in such lands equal to a child's share in the same, which can be attached in a suit against her. (Orrick vs. Robbins, Adm'r., 34 Mo., 226, overruled.)—Wegley vs Beauchamp, 544.

DYING DECLARATIONS; See Evidence, 8, 9.

E.

EASEMENTS AND SERVITUDES; See Damages, 4, 5.

EMBLEMENTS; See Crops.

EJECTMENT.

1. *Ejectment, judgment in—Subsequent suit—Defenses, etc.*—A judgment in ejectment is no bar to another suit, or to defenses set up in a subsequent suit, unless the titles and defenses are precisely the same as in the first suit.—Foster vs. Evans, 39.

2. *Ejectment—Plaintiff in, must stand on his own title.*—A plaintiff in ejectment must first show title in himself before he can have any standing to disturb defendant's possession.—*Id.*

3. *Ejectment—Equitable defense—Part performance—Averments, etc.*—In ejectment, when the defense sets up a parol contract for the sale of the land to a third party, followed by a change of possession and the making of improvements on the premises, but fails to state that the possession was taken and that the improvements were made in good faith and solely under the belief that the parol contract would be specially performed, the equity is not sufficiently stated to make the defense good.—Ells vs. Pacific R. R., 200.

See Land and Land Titles, 14; Mortgages and Deeds of Trust, 1.

ELECTIONS; See Callaway County Bonds; Lathrop, Town of; Railroads, 8; Saline County Bonds.

EQUITY.

1. *Equity—Frauds and Trusts—Statute of frauds.*—Where one acquired the title to premises by fraud, and by the same means induced the owner to attorn to him, a court of equity would declare him a trustee for the true owner. He could not in such case invoke the statute of frauds, and claim that agreements by which the title was obtained were verbal, and, therefore, void under that statute. The statute of frauds was never intended for the protection of fraud. Damschroeder vs. Thias, 100.

2. *Equity—Injunction—Landlords—Summons before justice of the peace, etc.*—Injunction will lie against proceedings before Justice's Court, on a landlord's warrant, where the equitable title to the premises is being tried between the same parties, at the same time, in another court. One of the offices of an injunction is to prevent a multiplicity of suits, when the whole question can be decided in a single proceeding.—*Id.*

3. *Ejectment—Equitable defense—Part performance—Averments, etc.*—In ejectment, when the defense sets up a parol contract for the sale of the land to a third party, followed by a change of possession and the making of improvements on the premises, but fails to state that the possession was taken and that the improvements were made in good faith and solely under the belief that the parol contract would be specifically performed, the equity is not sufficiently stated to make the defense good.—Ells vs. Pacific R. R., 200.

4. *Equity—Relief—Evidence.*—Evidence in order to warrant a Court of Equity in affording relief, must be clear and forcible, and positive and definite.—*Id.*

5. *Judgment collusively obtained, set aside, when.*—A judgment collusively or fraudulently procured, should be set aside at the instance of the party against whom it was rendered.—Mayberry vs. McClurg, 256.

6. *Equity—County Court—Administrator—Proceedings to set aside allowance of demand against estate—Parties.*—In proceedings in equity to set aside an allowance by the County Court of sundry demands against the estate of a deceased person on the ground that the same were obtained by collusion between the claimants and the administrator. 1st. It is not necessary that the latter should be joined. 2nd. The bill will not be multifarious where the matters charged were part of the same general transaction, in which all the claimants participated, and in the results of which all were interested.—*Id.*

EQUITY.—Continued.

7. *Equity—Suit to divest titles—Character of proof required.*—In an action in the nature of a suit in chancery, to divest defendant of his title to certain lands, the evidence in order to warrant a decree in favor of plaintiff must be so clear, definite and positive, as to leave no reasonable ground for hesitancy in the mind of the Chancellor.—Forrester vs. Scoville, 268.

8. *Equity—Land and land titles—Cloud upon title, what constitutes.*—If a defect in a deed is such as to reqnire legal acumen to discover it, whether it appears on the face of the deed or proceedings, or is to be proven *aliunde*, it constitutes a cloud on the title which courts of equity have jurisdiction to remove.—Merchants' Bank vs, Evans, 335.

See conveyances, 1; Fraud; Injunctions; Partition, 3; Practice, civil, actions, 1; Trusts and Trustees.

ESCHEATS.

1. *Escheats, statute of—Alien enemy, etc.*—In an action under the statute of escheats (Wag. Stat., 584) to have certain land declared the property of the State, where the petition avers that the last lawful owner became such in 1825 (see Rev. Laws of 1825, p. 35,) and was, at the time of his death, an alien enemy, but contains no allegation that he had not declared his intention to become a citizen when he became the owner, and fails to aver that he had not devised the land at the time of his death—in such case the petition is bad for want of statement of a sufficient cause of action.—State vs. Killian, 80.

ESTOPPEL.

1. *Estoppel—What constitutes—Party setting up must have been misled—Cannot set up when he has some knowledge or means of knowledge—Silence—Fraud—Title—Deed—Record*—No man can set up another's act or conduct as the ground of an estoppel, unless he has himself been deceived or misled by such act or conduct, nor can he set it up when he knew or had the same means of knowledge of the truth as the other party. Silence only estops when it becomes a fraud. If a man holds title to his lands by deed which has been duly recorded, it is all the notice he is bound to give as long as he remains passive.—Bales vs. Perry, 449.

2. *Land Titles—Division fence—Agreement made under ignorance of facts, no estoppel.*—Where parties have agreed upon a division line and accepted each his own part in accordance therewith, if the agreement was made and entered into under a mistake of facts, neither party is subsequently precluded from claiming his rights; as under such circumstances there is no presumption of surrender, or waiver of rights which were given up under a misapprehension.—Kincaid vs. Donnell, 552.

3. *Land titles—Division line supposed to be the true one—Parties not bound by, when.*—If two adjoining proprietors are divided by a line which they suppose to be a true one, each claiming only to the true line, wherever it may be, they are not bound by such supposed line, but must conform to the true one, when ascertained.—*Id.*,

See Bills and Notes, 5, Revenue, 2.

EVIDENCE.

1. *Agency—Share of profits, suit for by clerk—Evidence—Books of concern—Rule of damages, same as that of partnership.*—In an action by a clerk against his employer, on an agreement whereby the former was to receive as compensation a certain portion of the net profits of the business, where it appeared that plaintiff kept the books and managed the business, the books would be proper but not conclusive evidence on either side. Defendant might show that plaintiff had introduced false or fraudulent entries into the books of the concern.

The rule for ascertaining damages in such cases is precisely the same as that which applies to partnership accounts.—Wiggins vs. Graham, 117.

2. *Criminal law—Murder—Evidence—Testimony of wife for co-defendant of*

EVIDENCE.—Continued.

husband.—Where two persons are jointly indicted for murder, and they are tried separately, the wife of one is a competent witness for the other.—State vs. McCarron, 28.

3. *Agency—Declaration of agent, when competent as* res gestæ.—An agent cannot prove the fact of his agency by his own acts and declarations alone; but when that fact has been established *aliunde*, proof of his acts and declarations during the pendency of negotiations for a sale by him as agent, is competent as part of the *res gestæ* to show the character and extent of his authority.—Sumner vs. Saunders, 89.

4. *Depositions—Appearance no waiver of dedimus.*—The appearance of an opposing party at the taking of depositions is a waiver of notice, but not a waiver of a *dedimus.*—Seymour vs. Farrell, 95.

5. *Evidence—Witness, character of—Impeachment.*—The character of a witness cannot be impeached by testimony as to specific facts.—*Id.*

6. *Bills and notes—Maker—Signature on back of note, legal effect of—Parol evidence.*—The signature on the back of a note, of one who is neither payee nor indorsee, is *prima facie* that of maker. But this presumption may be repelled by parol evidence. It may be thus shown that in fact he signed only as guarantor.—*Id.*

7. *Witnesses—Divorce—In suits of, husband wife may testify, when.*—Under § 1 of the act concerning witnesses, (W. S., 1372,) where husband and wife are opposing parties, as in suits for divorce, they are competent as witnesses to give evidence as to all matters except communications made by one to the other.—Moore vs. Moore, 118.

8. *Criminal law—Dying declarations—When admissible as evidence.*—In order to render dying declarations admissible in evidence, it must appear that the person making them was under the belief that his dissolution was near at hand, and that he had abandoned all hope of recovery. (State vs. Simon, 50 Mo., 370, affirmed.) State vs. McCarron, 160.

9. *Practice, criminal—Instructions—Dying declarations—Credit to be attached to, to be determined by the jury.*—An instruction in a murder trial, that the dying declarations of the person killed as to the circumstances which produced his death, should receive the same same credit as his testimony if taken under oath, would be erroneous. The only province of the court is to determine the admissibility of such declarations. The degree of credit to be attached to them should be left to the jury to determine.—*Id.*

10. *Lost deed—Proof of contents—Record—Imperfect acknowledgement.*—The contents of a lost deed cannot be proved in evidence after the record thereof had been rejected for want of proper authentication of the certificate of acknowledgment. and without otherwise proving its execution. Hardin vs. Lee, 241.

11. *Deeds—Ambiguity—Recital of county, etc.*—Where land is accurately described in a deed by section, township and range, and the deed is regularly acknowledged by a Justice of the Peace of one of the counties of this State, it is not incompetent as evidence from the further fact that it does not recite the names of the county and State in which the lands are situated.—Howe vs. Williams, 252.

12. *Evidence—Fraud—Link in chain of testimony.*—It is no error to exclude testimony, which is of value only as a link in the chain of evidence required to make out a defense of fraud, and is unsupported by such other testimony.—Hardin vs Phelps, 332.

13. *Evidence—Reputation of party to suit as to chastity, when may be inquired into—Wills—Undue influence of beneficiary.*—Evidence as to the chastity of a party to the suit is admissible only when there is an issue directly involving the character of the party, or when it is necessary in order to ascertain the amount of damages, or when it is a matter of fact rendered material by preceding evidence. And where it was attempted to set aside a will on the

EVIDENCE.—Continued.

ground of undue influence and control on the part of the beneficiary over the testator, and no issue was made as to the chastity of the devisee, *held* that her chastity was not properly a matter of evidence.—Rogers vs. Troost's Admr., 470.

14. *Evidence—Objection, grounds of—What statement sufficient.*—An objection to evidence as incompetent and irrelevant, sufficiently states the grounds of such objection.—*Id.*

15. *Husband and wife—Wife competent witness, when*—The wife is a competent witness where she is joined with her husband in the suit, except as to communications between herself and her husband.—Buck vs. Ashbrook, 539.

16. *Practice, civil—Testimony, objections to—When overruled as being too general.*—An objection to a power of attorney on the ground that it is incompetent, illegal and not responsive to the issues made, is too general, and for that reason, may be disregarded and overruled by the court.—Margrave vs. Ausmuss, 561.

17. *Testimony—Objections to, not preserved presumed correct.*—Where an objection to evidence is not preserved, the action of the court overruling it is presumed to be correct.?

18. *Evidence, objections to—Motions for a new trial—Bill of exceptions, etc.*—Where objections to testimony are not incorporated in a bill of exceptions, and the attention of the court is not called to them, on motion for a new trial they will not be considered in the Supreme Court.

19. *Evidence—Declarations, what permissible.*—It is error to permit testimony as to a portion of the declaration of a witness on a particular subject and to refuse to hear the remainder.—Burghart vs. Brown, 600.

See Conveyances, 8; Descents and Distributions, 1; Equity, 4, 7; Judgment, 1; Kansas City, 1; Practice civil, Trials, 1, 2, 3, 4; Practice, Supreme Court, 5; Trusts and Trustees, 5, 6.

EVICTION; See Conveyances, 5.

EXCEPTIONS; See Practice civil, Appeal, Practice SupremeCourt.

EXECUTION.

1. *Execution—Bond of indemnity—Proceedings in execution, how far bond must show.*—The proceedings on execution, referred to in a bond of indemnity given to a sheriff by plaintiff in the execution, enter into and form a part of it as fully as if such proceedings are recited *in hæc verba*. And the bond is not invalid by reason of its failure to set out such proceedings in detail.—Gutzwiller to use, etc., vs. Adams' Admr., 47.

2. *Lands and land titles—Lien of judgment—Sale under execution will relate back to date of judgment, when*—Where an execution is issued and levied on real estate, while the lien of the judgment thereon is in force, and a sale under the execution is properly made, and a deed executed to the purchaser, such deed will relate back to the date of the judgment, and the title that defendant had at that time will pass.—Union Bank vs. Manard, 548.

See Assignment, 1; Homestead, 1; Judgment, 10; Sales, 5; Sales, U. S. Marshal's, 1, 2.

EXEMPTION; See Execution; Homestead, 1.

F.

FEES; See Practice Criminal, 4.

FENCES; See Estoppel, 2, 3; Land and Land Titles, 16, 17; Railroads, 3.

FOREIGN JUDGMENT; See Judgment, 2, 3, 4, 16.

FORGERY; See Bills and Notes, 10.

FRAUD.

1. *Fraud, Limitations—Statute of—Commences running, when.*—In actions for relief on the ground of fraud, the statute of limitations begins to run from the discovery of the fraud, and where the fraud is connected with the conveyance of realty, ten years constitutes the bar. (Hunter vs. Hunter, 50 Mo., 445.)—Thomas vs. Mathews, 107.

2. *Sales, inadequacy, of price, etc.*—Inadequacy of price taken by itself is not sufficient ground for setting aside a sale of land, but, when coupled with other facts it is a circumstance entitled to consideration.—Wagner vs. Phillips, 117.

3. *Lands, sale of—Bidders kept away—Competition repressed, etc.*—Where evidence shows that by the acts, connivance and representations of a purchaser, bidders were kept away from the sale of certain land; that competition was repressed when the sale took place, and that, except for these practices the land would have brought a price greatly in excess of that actually realized the sale will be set aside.—*Id.*

4. *Fraud, presumptions as to.*—Fraud will not be presumed where all the facts consist as well with honesty and fair dealing, as they do with an intention to defraud.—Rumbolds vs. Parr, 592.

See Conveyances, 10; Estoppel, 1; Frauds, Statute of.

FRAUDS, STATUTE OF.

1. *Statute of frauds—Mem. in writing—Part performance.*—Where the vendee of real estate took possession and worked the property as his own under the contract of purchase, and appropriated the proceeds to his own use, he would be bound for the purchase money without the necessity of any writing. There would in that case be such part performance as to take it out of the statute of frauds.—Tatum vs. Brooker, 148.

2. *Trusts—Land—Frauds, Statute of*—When a person buys land with his own money, in order to make him a trustee thereof for any one, such trust under the statute of frauds must be manifested by writing and the evidence must be clear and unequivocal.—Woodford vs. Stephens, 443.

See Equity, 1.

FRAUDULENT CONVEYANCES; See Conveyances, 10.

FREIGHTS; See Railroads, 7.

G.

GARNISHMENT.

1. *Garnishment—Note—Payee, agreement of as to maker—Estoppel, etc.*—In garnishment proceedings wherein the maker and payee of the note were both made defendants, if the payee, by an agreement or arrangement, had the garnishment proceedings dismissed as to him, with the understanding that the judgment should be taken against the maker, he could not afterward be heard alleging that he was not bound thereby.—Callaway vs. Johnson, 33.

GRANT OF LANDS; See Land and Land Titles, 1.

GUARDIAN AND WARD.

1. *Guardian ad litem cannot make agreement in one case as to another*—A guardian *ad litem* cannot make a binding agreement that the decision in one case shall determine that in another, although the cases involve precisely the same facts, and the same parties and substantially the same points of controversy.—He has but one duty to perform, and that is, to defend the action.—McOhm vs. Farthing, 109.

2. *Guardians and Curators—Minors, ands of—Sale of—Probate Court.*—Probate or County Courts have power to order guardians or curators' to sell the lands of minors at private sale. That power is not taken away by the statute of 1855, touching curators and guardians. (R. C., 1855, p. 826–7, §§ 25, 26, 27.) The object of this statute was not to take away from those courts any

GUARDIAN AND WARD.—Continued.

existing powers in ordering the sale, but merely to regulate the proceedings of the curator or guardian in conducting the sale.—McVey vs. McVey, 406.

3. *Curator—Sale of ward's estate—Appeal from County to Circuit Court—Will lie, when.*—In case of a judgment of the County Court approving a sale by a curator of his ward's estate, the statute contains no prohibition of the right of appeal, nor is there any provision regulating it. *Held*, that in such cases, an appeal will lie from the County to the Circuit Court; but that the only effect of the appeal will be to take the record of the County Court up to the Appellate Court in the same manner and to the same extent is in cases of *certiorari*. (Snoddy vs. Pettis County, 45 Mo., 36, and Kenrick vs. Cole, 46 Mo., 85 commented on.)—*Id.*

4. *Circuit Court—Judgment of, disapproving sale by guardian—Appeal from, to Supreme Court will lie.*—On appeal to the Circuit Court from the judgment of the County Court approving of the sale of a ward's estate by his curator, a judgment of the Circuit Court disapproving the sale, will authorize an appeal therefrom to the Supreme Court. Though the Circuit Court judgment is not a complete and final disposition of the cause, yet it is final so far as that court is concerned and that is sufficient.—*Id.*

5. *Guardian—Sale of ward's land—Report concerning—Approval of, by County Court—May be made how long after sale.*—Where a guardian sold the land of his ward in March 1856, and filed his report with the County Court at the April term of that year, the mere fact that the report remained in abeyance and undetermined for several years, would not render its approval at the end of that time, if otherwise regular, unauthorized and invalid. Until there is a final judgment and order approving the sale, the functions of the curator are not final; and the purchaser can get no deed and acquire no title.—*Id.*

6. *Guardians—Appointment, order of—Recital of names of minors.*—In the order of the Probate Court appointing A. the guardian of the minor children of B., it is not necessary to set out the names of the children. Such recital serves only as a means of identification.—Reppstein vs. St. Louis Mutual Ins. Co., 481.

H.

HOMESTEAD.

1. *Homestead—Forfeited recognizance—Execution in favor of the State.*—In case of an execution issued against the surety on a forfeited recognizance, his homestead, under the law, (Wag. Stat. 697, § 1,) is exempt, notwithstanding that the creditor is the State.—State vs. Pitts, 133.

HUSBAND AND WIFE.

1. *Criminal law—Murder—Evidence—Testimony of wife for co-defendant of husband.*—Where two persons are jointly indicted for murder, and they are tried separately, the wife of one is a competent witness for the other.—State vs. McCarron, 28.

2. *Witnesses—Divorce—In suits of, husband and wife may testify, when.*—Under § 1 of the act concerning witnesses, (Wag. Stat. 1872) where husband and wife are opposing parties, as in suits for divorce, they are competent as witnesses to give evidence as to all matters except communications made by the one to the other.—Moore vs. Moore, 118.

3. *Married women—Estates of—Debts created by trustees, do not encumber.*—The law is well settled that a married woman holding separate property may create debts in reference thereunto and so binds it in equity for their payment. But the simple fact, for example, that her trustee creates debt for improvements ordered by him on her property, does not of itself create a lien on the property without any deed or other appropriate instrument of writing executed by him.—Druhe vs. DeLassus, 165.

4. *Mechanic's lien—Married woman—Husband made co-defendant, when.*—In suit to enforce a mechanics' lien against the property of a married woman, the

HUSBAND AND WIFE.—Continued.

husband must be joined as defendant. (Latshaw vs. Mc'Nees, 50 Mo., 381.) —Fink vs. Hanegan, 280.

5. *Use and trust—Property conveyed to separate use of married woman—Death of trustee—Estate vests, how.*—When land is conveyed to a trustee for the sole use and benefit of a married woman, upon his death, the use is immediately executed in her, and if she be dead, then in her legal heirs.—Roberts vs. Moseley, 282.

6. *Husband and wife—Personal property of wife—Declaration of trust by husband.*—All personal property of wife in possession, whether at the time of marriage or afterwards acquired, vests absolutely in the husband, unless conveyed to him or her for her sole and separate use, and he cannot be declared a trustee for his wife by any loose or general remarks made, in conversations. To establish such a trust, the evidence must be clear and unequivocal.—Woodford vs. Stephens, 443.

7. *Husband and wife—Wife competent witness, when.*—The wife is a competent witness when she is joined with her husband in a suit, except as to communications between herself and her husband.—Buck vs. Ashbrook, 539.

8. *Married women, rights of—Note by—Effect of signing to charge separate estate.*—A married woman for whose separate use real estate has been conveyed to a trustee has the power to charge that property by the execution of a promissory note, in conjunction with her husband, and such act is presumptive evidence of such intention.—Lincoln vs. Rowe, 571.

See Descents and distributions; Dower; Divorce.

I.

INDICTMENT; See Practice Criminal.

INDORSEMENT; See Bills and Notes.

INFANTS; See Guardian and Ward; Partition, 4.

INJUNCTION.

1. *Injunction—Technical errors, release of.*—Whatever teahnical errors may exist in proceedings that are prayed to be enjoined are released by the injunction. (Wagn. Stat., 1030, § 10.)—Hazeltine vs. Reusch, 50.

2. *Injunction—Sale of land—Cloud on title.*—The sheriff will be enjoined from the sale of land for non-payment of taxes, although the assessment be illegal, where a cloud will thereby be thrown upon the title. (Leslie vs. St. Louis, 47 Mo., 474).—McPike vs. Pew, 63.

3. *Railroad, subscription by county for—Notice—Injunction, etc.*—Where, under the act of March 15, 1870 (Wagn. Stat., 2d ed., 321 *a*), a County Court ordered a special election to vote on a proposition to subscribe to the capital stock of a railroad, but no sufficient notice was given of the election; *held:*

1. That an assessment against the landholders of the county, to meet the subscription ordered by the vote, would be unauthorized by law.

2. That if the assessment had been warranted by law, the sheriff could not collect it under that statute by levy upon and sale of real estate; and that injunction would lie to restrain the officer from making such sale.

4. *Equity—Injunction—Landlords—Summons before justice of the peace, etc.*—Injunction will lie against proceedings before Justice Court, on a landlord's warrant, where the equitable title to the premises is being tried between the same parties, at the same time, in another court. One of the offices of an injunction is to prevent a multiplicity of suits, when the whole question can be decided in a single proceeding.—Damschroeder vs. Thias, 100.

5. *Injunction—Public corporation—Power of the State to restrain from the commission of unlawful acts.*—It is competent for the State, acting through its authorized officers, to maintain proceedings by injunction to restrain public corporations from doing acts in violation of the constitution and laws of the

INJUNCTION.—Continued.

State. Section 24 of the statutes concerning Injunctions, (W. S., 1032,) which provides that "the remedy by injunction or prohibition shall exist in all cases where injury to real or personal property is threatened, and to prevent the doing of any legal wrong whatever, whenever, in the opinion of the court, an adequate remedy cannot be enforced by an action for damages," applied to such cases.—State vs. Saline County Court, 350.

6. *Injunction—Public corporations—Powers of State through its officers to interfere.*—Where the State in its corporate character and capacity, has no interest in the litigation, its interference to prevent the commission of an unlawful act by a public corporation, can only be permitted on the ground that the Attorney General or Circuit Attorney is legally authorized to interfere in all cases where private people are held incompetent to sue, and where the rights of the whole people or any considerable number of them are in the danger from the unlawful acts of persons acting or assuming to act under color of lawful authority or otherwise. Such interference under any other circumstances is not authorized by our statutes, which define the duties of the Attorney General and Circuit Attorney, nor is it warranted by Common Law.—*Id.* PER WAGNER, Judge, dissenting.

7. *Injunction—Subscription—Railroads—Negotiator of bonds—County courts—Parties.*—In an action by an injunction when the petition alleges that a County Court had made an unlawful subscription to a railroad, and had delivered a quantity of bonds issued to such subscription into the hands of an agent to be negotiated, and had levied a tax to pay said bonds and the interest thereon; and the petition prayed that the subscription be cancelled, and that the County Court and the Justices thereof and said agent be restrained from commission of said acts: *Held,* that the railroad and the agent for the negotiation of bonds as well as the County Court and its Justices were proper parties to the action.—State vs. Callaway County Court, 395.

INTEREST; See Bills and Notes, 3.

J.

JAILS; See Revenue, 3.

JASPER COUNTY; See Constitution of Mo., 2; Court, Jasper Common Pleas.

JEOFAILS.

1. *Practice—Jeofails—Statute of.*—The rule as settled under our statute of amendments and jeofails, (W. S., 1036, § 19,) is, that although a statement may be defective, yet as it appears, after verdict, that the verdict could not have been given, or judgment rendered, without proof of the matter omitted to be stated, the defect will be cured by the statute.—State, *ex rel., etc.*, vs. Sullivan County Court, 522.

See Injunction, 1; Judgments, 12; Mechanics, Lien, 1; Practice, civil, Pleadings, 4, 5, 13.

JUDGMENTS.

1. Res adjudicata—*Merits must be passed on—Evidence, record of—Parol testimony as to.*—Where the merits of a matter in dispute are not passed on, the judgment therein will be no bar to another action; and where the record does not positively show what was passed on, parol evidence may be resorted to. Spradling vs. Conway, 51.

2. *Judgments, foreign—Jurisdiction—Want of service—Defenses in suit on such judgment.*—In suit brought upon the record of a judgment rendered in a sister State, defendant may set up in his answer as a defense the fact that in the original suit no service was had upon him, and that the appearance entered on his behalf was fraudulent, notwithstanding that such defense contradicts the recital contained in that record. Such matter is proper under the statute law of this State, authorizing equitable defenses. But defendant must couple with such statement allegations showing that he has a good defense on the merits,

JUDGMENTS.—Continued.

and so has been injured by such fraudulent appearance. Otherwise there would be no warrant for equitable interference. Marx vs. Fore, 69.

3. *Judgments import verity—May be set aside, when.*—Judgments of courts of record, whether domestic or foreign, may be impeached and declared void for fraud in actions brought to enforce them in this State. At law, where there is no apparent irregularity, judgments import absolute verity; but in equity they may be set aside when obtained by undue and fraudulent contrivances, in the absence of and without notice to the opposite parties.—*Id.* Per Adams.

4. *Judgments of sister States—Suit upon—Notice, denial of—Plea of fraud, etc.*—In a suit on a judgment obtained in another State, where the record avers the service of notice, defendant will not be permitted by his answer to deny it. Nor will he be permitted to set up the defense that the judgment was obtained by fraud.—*Id.* Per Wagner.

6. *Judgment on demurrer—What will not support an appeal.*—A record entry that the "demurrer was by the court overruled; to which ruling the defendant at the time excepted; and defendant filing no further pleadings, judgment is rendered for plaintiff," is no such judgment as will support an appeal.—Rubey vs. Shain, 116.

6. *Judgment by default—Diligence—Meritorious defense.*—A judgment by default regularly rendered, will not be set aside unless due diligence be shown, and an affidavit of a good and meritorious defense be filed.—Castlio vs. Bishop, 162.

7. *Judgment, law extending lien of—Constitution.*—The legislature has power to pass a law extending the unexpired lien of a judgment from three to five years.—Ellis vs. Jones, 180.

8. *Judgment—Petition—Names of parties—Variance—Scire facias.*—Where a petition was brought in behalf of John T. Dowdall, and three other plaintiffs therein named, a judgment thereon in behalf of John T. Dowdall & Co., is not void by reason of the apparent discrepancy. And an execution on a *scire facias* to revive such judgment, issued in the name of "John T. Dowdall," is not void by reason of its variance from the original judgment, particularly where the records of the court showed that no original judgment in behalf of "John T. Dowdall" had been docketed. Neither the original judgment nor the execution in the *scire facias* can be impeached collaterally or by a stranger.—*Id.*

9. *Quieting title—Action for—Non-suit—Final judgment.*—In an action brought under the statute to quiet title, when plaintiff is forced by the action of the Court to take a non-suit, and files the usual motion to set the same aside, the Court errs in sustaining the motion and then entering a judgment forever debarring plaintiff from claiming any rights adverse to the defendant. The form of the judgment in such proceeding, should be the same that would be appropriate in suits brought in the ordinary way. It is only when the person ordered to sue makes default, or having appeared disobeys the order of the Court to bring the action and try the title, that the Court is authorized to enter such a judgment.—Yankee vs. Thompson, 234.

10. *Jurisdiction of subject matter—Judgment not set aside collaterally—Execution.*—In attachment suits the jurisdiction over any given subject matter is obtained by the levy thereon of a writ properly issued, and no matter what or how great irregularities may subsequently occur, its judgment in regard thereto will be valid and binding, until reversed by error or appeal, or set aside in a direct and appropriate proceeding for that purpose. A judgment can never be vacated collaterally; and never by a stranger under any circumstances. And the same rule applies to erroneous executions.—Hardin vs. Lee, 241.

11. *Judgment collusively obtained—Set aside, when.*—A judgment collusively or fraudulently procured, should be set aside at the instance of the party against whom it was rendered.—Mayberry vs. McClurg, 256.

12. *Jeofails—Judgment on proceedings technically defective—Cannot be attacked collaterally.*—In a collateral proceeding a judgment and sale made thereunder, cannot be set aside or avoided for technical errors.—Carson vs. Sheldon, 436.

JUDGMENTS.—Continued.

13. *Practice, civil—Judgment—Final, what is—Dismissal.*—Where, after a judgment for plaintiff, a motion in arrest is sustained, and the plaintiff given leave to amend his petition, and upon his refusal to amend, the case is dismissed, the dismissal is such a final judgment as will support an appeal or writ of error.—Bowie vs. Kansas City, 454.

14. *Practice, civil, Appeal—Judgment, what final.*—A judgment "that defendant go hence and that he recover his costs, etc.," although not very formal or full is substantially a good final judgment, and will support an appeal.—Rogers vs. Gosnell, 466.

15. *Judgment—Order final, in nature of—Not set aside at subsequent term.*—A final order is in the nature of a judgment and cannot be set aside at a subsequent term on the ground of error.—State *ex rel etc.*, Sullivan County Court, 522.

16. *Judgments, foreign—Judgment without notice—Suit upon this State—Effect of such judgment—Extra-territorially—Summary.*—Where under the laws of Tennessee summary judgment without notice is obtained by the sureties on a bond against their principal, such judgment can have no extra-territorial validity so as to authorize a recovery in this State.—Sevier vs. Roddie, 580.

See Ejectment, 1; Justices' Courts, 1, 3, 4, 5; Land and Land titles, 15; Mechanics' Lien, 1, 4; Practice, civil, Actions, 1; Practice, civil, Appeal, 8; Practice, civil, Pleading, 12; Practice, Supreme Court, 4, 8.

JURISDICTION; See Attachment, 3; Bills and notes, 11; Corporations, 4, 5, 6; Railroads, 6; Roads, 1.

JURY; See Practice, civil Trials, 2, 3; Practice, Criminal, 2, 7.

JUSTICES' COURTS.

1. *Justices' Court—Judgment—Appeal, etc.*—The failure of a justice to enter up a formal judgment on a verdict will not prevent an appeal to the Circuit Court. The effect of such judgment should be given to the verdict as soon as entered on the docket.—Hazeltine vs. Reusch, 50.

2. *Justices' Courts—Attachment—Affidavit, amendment after levy.*—In an attachment suit before a justice, that officer would have power to allow the affidavit for attachment to be so amended after the original levy, as to authorize the seizure of property otherwise exempt from attachment, and the amendment would relate back to the date of the original levy.—State to use of Crain vs. Leyman, 114.

3. *Justice of Peace—Transcript—May embrace several judgments.*—A justice of the Peace in certifying transcripts from his docket may embrace several judgments in one certificate, and it will not be necessary to certify each judgment separately.—Jeffries vs. Wright, 215.

4. *Judgment of Justice—Appeal—Parol proof as to summons, etc.*—The judgment of a Justice of the Peace cannot be attacked on appeal there from tothe Circuit Court, by parol testimony, in contradiction of the Constable's return showing that he had never served summons upon defendant. Even the judgments of courts having inferior jurisdiction are not obnoxious to collateral attacks, when the facts necessary to confer jurisdiction appear affirmatively on the face of the proceedings.—*Id.*

5. *Scire facias—Sheriff's return—Pleadings, etc.*—In proceedings in *scire facias* to revive a judgment, defendant cannot plead anything contrary to the sheriff's return; nor anything else which he might have pleaded in the original suit.—*Id.*

6. *Practice, civil—Appeal—Justices' courts—Notice.*—Under the statute regulating appeals from Justices' courts, if the appellant fails to give notice as required, the court at the instance of the appellee is bound of course, to continue the case.—Blake vs. Downey, 437.

7. *Justice's Court—Appeal—Facts shown by record—Appeal bond, sureties on, judgment against.*—In a case purporting to have come up from a justice of the Peace, where it does not appear that any transcript of the proceedings before the ustice was ever filed; or that he ever rendered any judgment in the cause

JUSTICES' COURT.—Continued.

from which an appeal could be taken, or that any appeal ever was taken or attempted, the record presents no state of facts authorizing a judgment in the Circuit Court against the sureties on the appeal bond; and such judgment having been shown, the cause should be reversed and remanded.—Seaton vs. Chicago, R. I. & P. R. R., 500.

8. *Justice of the Peace—Appeal—Failure to enter appearance on the 2nd day of the term—Judgment not allowed when.*—Where an appeal is allowed from a Justice of the Peace on a day subsequent to that of the judgment, and appellant fails to give the ten days' notice of his appeal required by the statute, (2 W. S., 850, § 21,) before the second ensuing term of the Circuit Court, the appellee may appear simply for the purpose of having the judgment affirmed, and will be entitled to such affirmance, by reason of the continued failure of appellant to give such notice. But judgment of affirmance for want of prosecution cannot be taken at the return term of the appeal, unless appellee enter his appearance on or before the second day of the term. (*Id.*, § 22.)—Nay vs. H. & St. J. R. R. Co., 575.

See Bills and Notes, 11; Costs, 1.

K.

KANSAS CITY.

1. *Statute, construction of—Act incorporating City of Kansas a public act—Judicial notice.*—Under § 12, Art. XI, of the act incorporating the City of Kansas, (Sess. Acts 1867, p. 18,) which provides that "this act is hereby declared to be a public act and may be read in evidence in all Courts of law and equity in this State without further proof," it was intended to make that act a public act so that the Courts would take judicial notice of it. When the existence of a corporation is admitted, if a public corporation within the State, and particularly if it is a municipal corporation, the Courts are judicially informed of the laws regulating their organization, rights and duties, just as they are of all other public statutes.—Bowie vs. Kansas City, 454.

L.

LAND AND LAND TITLES.

1. *Land and Land Titles—Grant of land to States—Entry with register, etc.*—A grant of land to the States, under the act of September 28, 1850, for reclamation of swamp lands, reserved it from sale by ordinary entry with the United States register or receiver.—Foster vs. Evans, 39.

2. *Ejectment—Color of title—Defense of.*—A sale on a judgment of foreclosure by the Circuit Court cannot be made during a session of the County Court, and, if so made, would be void. But a purchaser at such sale would nevertheless hold under color of title, and may, in suit in ejectment brought against him, set up the forfeited mortgage to protect his possession against all except the mortgagee and those claiming under him on a regular foreclosure sale.—Jackson vs. Magruder, 55.

3. *Lands and land titles—Title bond—Notes for purchase money—Property at whose risk, etc.*—After an executory contract for the conveyance of real estate has been entered into, by the execution of a bond for title and notes for the purchase money, the property is at the risk of the purchase.—Snyder vs. Murdock, 175.

4. *Land, sale of—Purchase notes—Title bonds—Pleading—Counter-claim.*—Where notes are given for the purchase money of land, and the vendor delivers to the maker of the notes his bond for the title, the right of the vendor to sue on the notes does not depend on his tender of the deed, and in bringing suit he is not bound to refer to the title bond. The transactions are separate and distinct, and the defense that plaintiff had failed to make tender of the deed is matter for an independant counter-claim.—*Id.*

LAND AND LAND TITLES.—Continued.

5. *Vendor's lien—Notice, what constitutes.*—A purchaser who at the time of sale is in possession of facts, which would put an ordinarily prudent man upon inquiry, as to the existence of a vendor's lien upon the property purchased, will be held to take subject to the lien.—Major Adm. of Lisle vs. Bukley, 227.

6. *Vendor's lien—Security—Waiver—Estoppel.*—The recital in a conveyance of land that "The balance of the purchase money, to-wit: $1,680 is secured to be paid" is not a waiver of the lien of the vendor, nor does it estop him from asserting it.—*Id.*

7. *Deeds—Habendum—No essential part of.*—The *habendum* clause is no essential part of a deed. It may be entirely rejected if repugnant to the other clause sof the conveyance.—*Id.*

8. *Deeds—Ambiguity—Recital of county, etc.*—Where land is accurately described in a deed by section, township and range, and the deed is regularly acknowledged by a Justice of the Peace of one of the counties of this State, it is not incompetent as evidence from the further fact that it does not recite the names of the county and state in which the lands are situated.—Howe vs. Williams, 252.

9. *Land and land titles—Sales by United States Marshal under judgments at law—Must be made at a term of a Circuit Court—Act of Congress regulating process in United States Courts* (1828.)—Under the act of Congress passed May 19, 1828, (4 U. S. Stat. at Large, 288, § 3), which provided that writs of execution and other final process issued on judgments and decrees rendered in any courts of the United States, and the proceedings thereupon should be the same, except their style, in each State, as were then (1828,) used in the courts of such States, the United States courts have no right to make any regulations for the government of their Marshals in conducting sales under executions at law, different from those fixed by the State laws. There never has been any law of this State, authorizing execution sales of real estate to be made in vacation of the Circuit Court, and during a session of a County Court; but our laws have always required such sales to be made during the session of the Circuit Court, excepting under acts creating certain Courts of Common Pleas. It is essential to the validity of such sales, that they should be made during the session of the proper court, and a violation of this rule would render the sale void, not only in a direct, but also in a collateral proceeding.—Merchants' Bank vs. Evans, 335.

10. *Execution Sales—U. S. Courts—Order of Court to execute deed of land at a term subsequent to the sale—Relation—Rights of third parties.*—An order of a court directing the successor of a Marshal who had made a sale, to execute a deed to the purchaser, is simply an administrative, not a judicial act, and if made at a term subsequent to the sale, although it would relate, as to the parties, to the time of the sale, it would not operate to cut out the intervening rights of a stranger without notice.—*Id.*

11. *Equity—Land and land titles—Cloud upon title, what constitutes.*—If a defect in a deed is such as to require legal acumen to discover it, whether it appears on the face of the deed or proceedings, or is to be proven *aliunde*, it constitutes a cloud on the title which courts of equity have jurisdiction to remove.

12. *Land and land titles—Limitation—Adverse possession constitutes an affirmative title.*—Adverse possession for ten years is not only a bar as a limitation, but constitutes an affirmative legal title.—*Id.*

13. *County Court—Execution and sale of lands made during vacation of Circuit Court.*—Under an execution issued from the County Court on a judgment of the County Court given for the principal and interest of a school debt under the statute of 1855, (see R. C. 1845, p. 1425, §§ 27, 29 and 30,) a sale of land made during a session of the County Court, but while the Circuit Court was not in session, would be void either in a direct or collateral proceeding.—McClurg vs. Dollarhide, 347.

14. *Ejectment—Title—Common grantor—Title in third party, etc.*—When both parties in an ejectment suit claim under a common grantor, all that is necessa-

LAND AND LAND TITLES.—Continued.

ry for plaintiff to do, in order to insure a recovery, is to show that he has a better title from the common grantor. That some one else has a better title in such a case does not matter.—Union Bank vs. Manard, 548.

15. *Lands and land titles—Lien of judgment—Sale under execution will relate back to date of judgment, when.*—Where an execution is issued and levied on real estate, while the lien of the judgment thereon is in force, and a sale under the execution is properly made, and a deed executed to the purchaser, such deed will relate back to the date of the judgment, and the title that defendant had at that time will pass.—*Id.*

16. *Land titles—Division line supposed to be the true one—Parties not bound by, when.*—If two adjoining proprietors are divided by a line which they suppose to be the true one, each claiming only to the true line, wherever it may be, they are not bound by such supposed line, but must conform to the true one, when ascertained.—Kincaid vs. Downey, 552.

17. *Land titles—Division fence—Agreement made under ignorance of facts, no estoppel.*—Where parties have agreed upon a division line and accepted each his own part in accordance therewith, if the agreement was made and entered into under a mistake of facts, neither party is subsequently precluded from claiming his rights; as under such circumstances there is no presumption of surrender, or waiver of rights which were given up under a misapprehension. *Id.*

See Conveyances; Donations to charitable uses, 1; Dower, 2, 3; Ejectment; Equity, 7; Estoppel, 1; Judgment, 9; Mortgages and Deeds of trust, 3; Practice, civil, Pleading, 2; Railroads, 3, 5; Revenue, 4.

LANDLORD AND TENANT.

1. *Landlord and tenant—Lien of landlord for crop—Attachment of by creditor of tenant—Interplea—Construction of statute.*—A tenant, abandoned the leased premises, making default in payment of his rent and leaving behind him an unharvested crop. Before the expiration of the lien thereon authorized by statute, (Wag. Stat. 880, § 18,) after the landlord had harvested the crop, the same was seized under an attachment levied by a creditor of the tenant. *Held,* that the landlord had such a right of property in the crop as would enable him under the general attachment law (Wag. Stat. 192, § 52,) to claim it by interplea.—Sanders vs. Ohlhausen, 163.

LATHROP, TOWN OF.

1. *Bonds—Town of Lathrop—Subscriptions for, election touching—Votes—Judges—Poll Books—Recitals in bonds—Registration—Innocent purchasers.*—In a suit against the inhabitants of the town of Lathrop for the interest due upon certain bonds issued by that town, the following state of facts appeared in evidence: The bonds recited that they were issued pursuant to an order of the trustees * * "authorized by a vote of the people of said town at a special election held for that purpose." The records of the trustees showed that an election was ordered and that the bonds were ordered to be printed "in accordance with the order voted upon by the people of Lathrop on the 6th day of November, 1869." The testimony of the clerk of the election board showed that sixteen votes were cast and all in favor of the subscription. But no testimony indicated when the election was held; or that there were any judges of the election; or that any poll books were kept; or that any return of the votes cast had ever been made to any officer or body authorized to declare or decide the result; and the evidence strongly tended to show that no registration of the qualified voters of the town of Lathrop had ever been made and certified and filed as the law directed, or authenticated in any way. *Held,* that the issue of the bonds was unauthorized and that plaintiff could not recover.

In such a suit it would devolve upon plaintiff to show with reasonable certainty that the authority to issue the bonds had been conferred by an election authorized by law; that the vote had been preserved, by poll books or otherwise, by persons authorized to act for that purpose; and that the votes had at least been received and passed on by some persons authorized to decide whether the

LATHROP, TOWN OF.—Continued.

election had been carried, or whether the voters had assented to the subscription.

The recitals in the bonds would be sufficient to justify an innocent purchaser in receiving the bonds without being charged with notice of any mere irregularities in the conferring or exercise of the power necessary to their issue. But plaintiff would still have to show that an election was held at which the vote was taken, and that it had been taken and the result decided in substantial conformity to law.—Carpenter vs. Town of Lathrop, 483.

2. *Bonds, agent—Issue of, by—Maker of bonds must show delegation of power to issue.*—The rule that it devolves on the holder of a bond to show the want of power in the maker to issue it, has no application where the maker is a trustee. In all cases where the bond or other instrument purports to have been issued by delegated power, and where it could not be issued without such delegation of power, it devolves upon the holder to show that such power has been conferred before he can recover.—*Id.*

LAWRENCE COUNTY ; See Limitations, 5.

LEGISLATURE ; See Constitution of Missouri ; Judgments, 11 ; Statute, construction of ; Supreme court, 1, 2.

LICENSE ; See Merchants' License ; St. Charles, city of, 1.

LIEN, JUDGMENT ; See Execution, 2 ; Judgment.

LIEN, MECHANICS ; See Mechanic's Lien.

LIEN, VENDORS ; See Vendor's Lien.

LIMITATIONS.

1. *Limitations, Statute of—Note—Interest—Payment of by one maker—Effect of as to others.*—Payment of interest by one of several promissors in a note, before the statute of limitations attaches, takes it out of the statute as to the others.—Foster vs. Evans, 31.

2. *Fraud, Limitations—Statute of—commences running, when.*—In actions for relief on the ground of fraud, the statute of limitations begins to run from the discovery of the fraud, and where the fraud is connected with the conveyance of realty, ten years constitutes the bar. (Hunter vs. Hunter, 50 Mo., 445.) —Thomas vs. Mathews, 107.

3. *Limitation—Statute of—Debtor temporarily in the State—Absence from State —Running of statute.*—Under the act concerning limitations, (W. S., 919, § 16,) if the debtor comes within the jurisdiction of the state, whether temporarily or not, and afterwards departs from and resides out of the state, the time of his absence after such departure cannot be deemed or taken as any part of the time limited for the commencement of the action.—Whittlesey vs. Robert. 120.

4. *Administration, letters of—Statute of limitations—Note—General limitation Law.*—The statute of limitations commences running in favor of the estate of a deceased person only from the grant of letters. And a claim against the estate may, under the administration law be proved up within two years thereafter. But where the claim would otherwise be barred by the general limitation law, this period of two years cannot be grafted upon the statute as an extension of time. Thus, where in case of a promissory note, the grant of letters was less than ten years from its date, and the demand was exhibited less than two years afterward, but more than ten years from the date of the paper, the demand will be barred.—McKinzie, Admx. vs. Hill, Admr of Gay, 303.

5. *Limitations, statute of—Promissory notes—Rebellion, etc.*—In case of a promissory note made in Lawrence County, Missouri, in 1858, the running of the statute will not be stopped during the time in which the courts of the county were closed in consequence of the rebellion.—*Id.*

6. *Land and land titles—Limitation—Adverse possession constitutes an affirmative title.*—Adverse possession for ten years is not only a bar as a limitation, but constitutes an affirmative legal title.—Merchants' Bank vs. Evans, 335.

LIMITATIONS.—Continued.

7. *Limitations, statute of—Receipt effect of—When not a promise.*—A receipt given by defendant to a third party for money therein alleged to have been received on account of money paid out by defendant as surety to plaintiff; and which receipt was afterwards assigned by defendant to plaintiff, is not such a promise to pay as would carry the case out of the operation of the statute of limitations. On its face it purported to be an acknowledgment of money received by defendant for himself personally, and not in trust for the use of plaintiff. (See Reyburn vs. Casey, 29 Mo., 129.)—Menefee vs. Arnold, 536.

LOUISIANA AND MISSOURI RIVER, R. R.; See Callaway County Bonds; Saline County Bonds.

M.

MANDAMUS; See Clerk of Circuit Court, 1.

MARRIAGE AND COVERTURE; See Divorce; Dower; Husband and wife.

MECHANICS' LIEN.

1. *Mechanics' lien—Owner of property—Amendments, etc.*—Where judgment on a mechanic's lien affected only the premises charged with the lien, the contractor, against whom no personal judgment had been obtained in the proceedings, could not raise the objection that new property of the owner had been brought in by amendments to the plaintiff's petition after the same had been originally filed. (See W. S., 1004, § 12.)—Hartman vs. Sharp, 29.

2. *Mechanics' lien—Married woman—Husband made co-defendant, when.*—In suit to enforce a mechanics' lien against the property of a married woman, the husband must be joined as defendant. (Latshaw vs. McNees, 50 Mo., 381.)—Fink vs. Hannegan, 280.

3. *Mechanics' lien—Description of property.*—When a mechanics' lien is filed against a building in the country, and the acre of ground on which it is situated, the description must identify that particular acre, or the lien will fail, and the suit as against the owner must be dismissed.—Williams vs. Porter, 441.

4. *Mechanics' lien—Contractor, judgment against—Lien, failure of.*—Where a mechanic makes a personal contract with a contractor to do work on a house, though his lien against the property may fail, yet he can have a personal judgment against the contractor.—*Id.*

5. *Mechanics' lien—Issues—Jury—Instructions of Court.*—In a mechanics' lien suit, the question whether there is a lien or not, is one of the issues of the case, and must be submitted to the jury; though where there is a defective description of the property, the court may instruct the jury that there is no lien to enforce.—*Id.*

MERCHANTS' LICENSE.

1. *Merchants' license—Action on bond of town marshal for failure to issue.*—An action for damages will not lie against a town marshal on his official bond, on account of his refusal to issue a merchants' license, where no blank licenses have been ordered by the town council, nor issued by the clerk.—State, *ex rel.*, Street vs. Bezoni, 254.

MORTGAGES AND DEEDS OF TRUST.

1. *Mortgage—Sale under during session of County Court—Purchaser at—Ejectment—Color of title—Defense of.*—A sale on a judgment of foreclosure by the Circuit Court cannot be made during a session of the County Court, and if so made, would be void. But a purchaser at such sale would nevertheless hold under color of title, and may, in suit in ejectment brought against him, set up the forfeited mortgage to protect his possession against all except the mortgagee and those claiming under him on a regular foreclosure sale.—Jackson vs. Magruder, 55.

2. *Deed of Trust—Sheriff appointed trustee—Action against, on his bond.*—Under § 1 of the statute of 1855, touching trusts and trustees, (R. C. 1855, p. 1554.)

An action will not lie against a sheriff on his official bond for moneys collected by him under a deed of trust, acting in the place of a deceased trustee, where the appointment was made on the affidavit of the maker of the deed. Under a proper construction of that statute, the person making the affidavit should be the creditor, or some person who has an interest in the collection or coercion of the debt.—State to use of Major vs. Jackson, 196.

3. *Mortgages and Deeds of Trust—Power of sale—Trusts and Trustees—Trust power cannot be delegated.*—A special authority must be strictly pursued; and the office and duties of a trustee being matters of confidence cannot be delegated by him to another, unless an express authority to do so be conferred on him by the instrument creating the trust. He is incapacitated from delegating any duty, unless the power is expressly given, which involves the exercise of any discretion or judgment. Mere mechanical or ministerial duties, as, for example, causing advertisements of sale to be set up, proclaiming the sale at auction, and receiving bids, may be done by others. The particular medium of advertisement, the manner of conducting the sale, the best method of offering the property, and the question of postponement of the sale, are matters regarding which, when they are not prescribed by the instrument under which he acts special trust and confidence are resposed in the trustee; and they cannot be delegated to an agent.—Bales vs. Perry, 449.

See Administration, 2.

N.

NEGLIGENCE; See Damages. 1.

NEW TRIALS; See Practice civil, New trials.

NOTARY PUBLIC; See Conveyences, 1.

O.

OFFICERS.

1. *Officers—Amendments by, after expiration of term of office.*—Amendments in the proceedings of town officers, must be made by the persons who were in office when the proceedings were had; and it is not necessary that they should be in office at the time of making the amendments.—Kiley vs. Cranor, 541.

See Attorney Circuit, Merchants License, 1; Notary Public; Public Administrator, Revenue, 1, 2; Roads, 1, 2; Sales, United States Marshal's; Sheriff.

ORDER OF PUBLICATION.

1. *Order of publication—Notification of attachment—What sufficient.*—Notice to defendant under an order of publication that an action commenced against him "by petition and attachment" is a sufficient notification of the attachment.—Moore vs. Stanley, 317.

ORDINANCES; See St. Charles, City of, 1.

OSAGE VALLEY AND SOUTHERN KANSAS RAILROAD.

1. *Railroad Osage Valley—Condemnation—Refusal of owner to relinquish land.*—In proceedings to condemn land for the "Osage Valley and Southern Kansas Railroad Company" under the act of 1857, (Sess, Acts 1857, pp 59, 63,) no title to the land will pass unless it appear affirmatively from the record that the owner refused to relinquish his right of way to the company.—Ells vs. Pacific Railroad, 200.

P.

PACIFIC RAILROAD; See Railroads, 4.

PARTITION.

1. *Partition, sale under—Judgment, motion for against bidder, etc.*—Where the purchaser at a partition sale refuses to pay the amount bid by him for the property, and the property is afterward re-sold for a less sum, the sheriff may recover the difference by proceedings on motion, as in case of sales under execution. (Wagn. Stat., 610, §§ 46, 47.)—Hewitt vs. Lolly, 93.

2. *Partition sale—Motion to set aside—Affidavit, etc.*—In proceeding on motion to set aside the sale of land in partition, the Circuit Court must be allowed to exercise a sound discretion in regard to the sort of proofs to be used. And where they adopt the practice of allowing affidavits to be read *pro* and *con*, the Supreme Court will not interfere.—Goode vs. Crow, 212.

3. *Partition Sale—Reports as to time of sale—Motion to set aside sale, etc.*—Where bidders were kept away from a partition sale by rumors that the land would not be sold till the day following, and by reason thereof the land sold at greatly reduced rates, *Semble* that the sale ought to be set aside; and it is no matter how the reports got into circulation; whether by the agency of the purchasers or otherwise.—*Id.*

4. *Partition sale—Minor heirs not brought in court—Sale set aside, etc.*—A partition sale may be set aside, where it appears that a portion of the minor heirs were not properly brought before the court.—*Id.*

PARTNERSHIP; See Agency, 1.

PART PERFORMANCE; See Contracts, 1; Frauds, Statute of, 1.

PRACTICE, CIVIL; See Judgment, Verdict.

PRACTICE, CIVIL—ACTIONS.

1. *Action for Purchase Money—Special Verdict—Specific Performance—Judgment for, may be corrected, when.*—In suit by the vendor of certain lands, against the vendee thereof for a portion of the purchase money, plaintiff prayed for a decree ordering defendant to pay a portion of the amount to a third party. A special verdict and judgment were rendered accordingly. *Held*, that the suit was purely a legal one and not an action for specific performance. But that the error was an informal one and might be corrected on application to the court, by the substitution in place of the special decree, of a general judgment for the amount ascertained by the verdict.—Page vs. Arnold, 158.

2. *Bills and notes—Sureties—Action—Merger—Jurisdiction.*—Where a surety on a promissory note has been compelled under a judgment rendered against him no pay the note, his right of action against the maker of the note is on contract as on an implied promise to repay the money, and not on the note itself; that is merged in the judgment. And where the note was for an amount within a justice's jurisdiction, but the judgment was for an amount exceeding his jurisdiction in actions founded on contract, the surety's action was without the jurisdiction of the justice.—Blake vs. Downey, 437.

See Conveyances, 5; Judgment, 9; Replevin.

PRACTICE, CIVIL—APPEAL.

1. *Justice's Court—Judgment—Appeal, etc.*—The failure of a justice to enter up a formal judgment on a verdict will not prevent an appeal to the Circuit Court. The effect of such judgment should be given to the verdict as soon as entered on the docket.—Hazeltine vs. Reusch, 50.

2. *Practice—New trial, motion for—Bill of exceptions.*—Errors committed at the trial will not be examined into unless there was a motion for a new trial.—Witherall vs. Harris, 65.

3. *Bill of exceptions—Extension—Signing of.*—A bill of exceptions cannot be signed after the extension agreed upon has expired.—Hatcher vs. Moore, 115.

4. *Practice, civil—New trial—Exceptions—Appeal, etc.*—Where no motion for new trial is filed, and the errors complained of arise upon the trial, and should be preserved by exceptions, appeal will not be entertained.—*Id.*

5. *Judgment on demurrer—What will not support an appeal.*—A record entry that the "demurrer was by the court overruled; to which ruling the defendant

PRACTICE, CIVIL—APPEAL.—Continued.

at the time excepted; and defendant filing no further pleadings, judgment is rendered for plaintiff," is no such judgment as will support an appeal.—Rubey vs. Shain, 116.

6. *Practice, civil—Appeal—Affidavit—Informality of.*—An affidavit for appeal is not invalidated from the fact that the signature of deponent was through mistake placed below the *jurat* instead of being in its proper place.—Launius vs. Cole, 147.

7. *Practice—Supreme Court—No appeal, etc.*—Where the record of a case brought up from a lower court shows no allowance of an appeal or writ of error, it will be stricken from the docket.—State vs. Gabhart, 147.

8. *Probate Court—Final Judgment. appeal, etc.*—In proceedings brought in a Probate Court to establish a demand against the estate of the deceased, where the court merely renders a finding as to the amount, without entering a final judgment, no appeal will lie.—Philips to use of Tindall vs. Ward, 295.

9. *Practice, civil—Appeal—Judgment, what final.*—A judgment "that defendant go hence and that he recover his costs, etc.," although not very formal or full, is substantially a good final judgment, and will support an appeal.—Rogers vs. Gosnell, 466.

See Administration, 16; Costs, 1; Guardian and Ward, 5, 4; Judgment, 13; Justices' Courts, 6, 7, 8; Practice, civil—Trials, 9; Practice, Supreme Court.

PRACTICE, CIVIL—NEW TRIALS; Practice, civil—Appeals, 2, 4; Wills, 2.

PRACTICE, CIVIL—PARTIES.

1. *Trustee—Suit by—Mention of beneficiary in caption.*—In suit by a trustee, it is not necessary that the name of the beneficiary should appear in the caption even, where the trust is an express one.—Philips to use of Tindall vs. Ward, 295.

2. *Practice, civil, Parties—Trustee and beneficiary—Agreement between other parties may be sued on by beneficiary.*—A party for whose use a contract or a stipulation in a contract is made, when this fact appears on the face of the contract, may maintain a suit in his own name on such stipulation, and this rule applies as well to simple contracts as contracts under seal. The party in whose name the contract is made, is declared by our practice act to be a trustee of an express trust, and may sue in his own name; (2 W. S., 1000, § 3,) but this does not bar the beneficiary from doing so; a recovery by either would be a bar to an action by the other.—Rogers vs. Gosnell, 466.

See Bills and Notes, 1; Callaway County Bonds, 2; Equity, 6; Husband and Wife, 4; Judgment, 8; Mechanics Lien, 2.

PRACTICE, CIVIL—PLEADING.

1. *Demurrer—Answer waives, when—Withdrawal of answer by subsequent demurrer.*—If a demurrer be filed and not disposed of, and an answer is afterwards filed and the case tried on the answer, the demurrer is thereby waived. And where an answer is filed and afterwards the case goes off on demurrer without noticing the answer, the proceedings on the demurrer amount to a withdrawal of the answer.—Dunklin County vs. Clark, 60.

2. *Practice, civil—Cloud on title—Conveyance of land by defendant—Demurrer.*—To constitute a cloud upon the title to lands, some color of title must be shown in defendant. And a petition praying that a cloud be removed from the title to certain lands, which states merely that defendant had conveyed away the lands, but contains no averment that defendant had any title in them to convey, is bad on demurrer.—*Id.*

3. *Pratice, civil—Demurrer, waiver, etc.*—A party failing to except on demurrer overruled, and answering over, cannot afterwards raise the points involved in the demurrer, before the Supreme Court.—Highley vs. Noell, 145.

4. *Practice, civil—Verdict—County warrants—Statute of jeofails, etc.*—In a suit upon county warrants, the omission in the petititon of an allegation that there were funds in the county treasury out of which the warrants might have

PRACTICE, CIVIL—PLEADING.—Continued.

been paid, will not, after verdict, impair the judgment, but will be supplied by the court in aid of the verdict. (W. S., 1036, § 19.)—Howell vs. Reynolds County, 154.

5. *Practice, civil—Replication—Failure to file—Objection on ground of—Verdict.*—After trial ended and verdict rendered, as though a replication had been in fact filed, it would be too late to raise the objection that such pleading had been omitted.—*Id.*

6. *Land, sale of—Purchase notes—Title bond—Pleading—Counter-claim.*—Where notes are given for the purchase money of land, and the vendor delivers to the maker of the notes his bond for the title, the right of the vendor to sue on the notes does not depend on his tender of the deed, and in bringing suit he is not bound to refer to the title bond. The transactions are separate and distinct, and the defense that plaintiff had failed to make tender of the deed is matter for an independent counter-claim.—Snyder vs. Murdock, 175.

7. *Practice, civil—Pleading—Different count—Suit on contract containing more than one stipulation—Variance, etc.*—In suit on a note wherein defendant promised to pay a certain sum (together with costs and attorney's fees.) it was held no variance that the first count omitted, and the second count set forth the stipulation as to payment of costs, etc. In such case the second count might be treated as a continuation of the first, or as part of it and both might be considered as one count.— Brooks vs. Ancell, 178.

8. *Contract, stipulation in—Failure to sue upon all—Effect of.*—A party need not sue upon all the stipulations of a contract. But if he sues upon one and neglects to sue upon the other stipulations contained in the same contract, judgment in the first suit might be a bar to an action on the omitted stipulations.—*Id.*

9. *Judgment—Petition—Names of Parties—Variance—Scire facias.*—Where a petition was brought in behalf of John T. Dowdall, and three other plaintiffs therein named, a judgment thereon in behalf of John T. Dowdall & Co., is not void by reason of the apparent discrepancy. And an execution on a *scire facias* to revive such judgment, issued in the name of "John T. Dowdall," is not void by reason of its variance from the original judgment, particularly where the records of the court showed that no original judgment in behalf of "John T. Dowdall" had been docketed. Neither the original judgment nor the execution in the *scire facias* can be impeached collaterally or by stranger.—Ellis vs. Jones, 180.

10. *Damages—Railroads—Negligence—Burden of proof.*—In an action against a railroad company for personal injuries to plaintiff, the burden is not on plaintiff to aver affirmatively that he was at the time exercising due care, and was himself without negligence, contributing to the injury. Negligence in the plaintiff is a mere defense to be set up by the answer, and shown like any other defense.—Thompson vs. North Mo. R. R. Co., 190.

11. *Administrators, suit by—Petition, caption, etc.*—In suit brought by a public administrator, the body of the petition should show his authority to bring the action. Matters set forth in the caption, will not obviate defects in that regard. The caption is simply a *descriptio personæ*, and forms no part of the statement required in the petition.—Headlee Public Adm. vs. Cloud, 301.

12. *Judgment of Circuit Court—Pleading to—Allegation concerning.*—In pleading the judgment of a Circuit Court, it is not necessary to aver that it gave a valid judgment. The mere allegation that it gave judgment is sufficient. —Wickersham vs. Johnson, 313.

13. *Practice, civil—Pleading—Jeofails—Material averments omitted—Defect, cured by verdict.*—If a material matter be not expressly averred in the pleading but is necessarily implied from what is expressly stated therein, the defect is cured by verdict in favor of the party so pleading, on the presumption that he has proved upon the trial the facts insufficiently averred.—Bowie vs. Kansas City, 454.

PRACTICE, CIVIL—PLEADING.—Continued.

14. *Practice, civil—Demurrer—Involuntary non-suit, etc.*—After demurrer sustained plaintiff may either stand on his demurrer and submit to a final judgment, or he may amend his petition; but he cannot be forced to take a non-suit.—Comstock vs. Davis, 569.

15. *Contract with two stipulations—Suit upon—Misjoinder, etc.*—A contract to pay a given sum of money and in case of failure to pay the same on maturity and suit for the amount, to pay a reasonable attorney's fee in addition, is but one contract with two stipulations, and suit in one count on both stipulations is not demurrable by reason of misjoinder of cause of action. By suing on one stipulation and omitting the other, plaintiff might have barred himself from a subsequent suit on the remaining stipulation.—*Id.*

See Agency, 4; Corporations, 6; Ejectment, 1, 2; Escheat, 1; Injunction, 1; Judgment, 9; Practice, civil, Actions, 1; Revenue, 1, 2.

PRACTICE, CIVIL—TRIALS.

1. *Practice, civil—Allegata and probata.*—A defendant will not be permitted to set up evidence to support a defense, not set up in his answer.—Edwards Adm. of English vs. Giboney, 129.

2. *Practice civil—Jury—Evidence.*—In civil law cases it is for the jury to determine the weight of evidence.—Cape Girardeau Union Mill Co. vs. Bruihl, 144.

3. *Juries—Evidence—Witnesses.*—Juries are the proper judges of the weight of evidence and the credibility of witnesses.—Moore vs. Pieper, 157.

4. *Practice, civil—Evidence—Objections—No reasons stated—Effect of.*—Where no specific reasons are given at the time, showing why evidence is inadmissible, the objections will not be considered by the Supreme Court.—Bauer vs. Franklin County, 205.

5. *Practice, civil—Pleading—Allegata and Probata—Affidavit, etc.*—Where parties fail to file an affidavit setting forth in what respect they have been misled by a variance between the pleadings and the proof, (See W. S., 1033 § 1,) such evidence will be permitted to go to the jury—Turner vs. Chillicothe and D. M. C. R. R. Co., 501.

6. *Practice, civil—Conflict of testimony—Jury.*—When there is any conflict of testimony on any issue, that issue should be submitted to the jury.—*Id.*

7. *Practice, civil—Testimony, objections to—When overruled as being too general.*—An objection to a power of attorney on the ground that it is incompetent, illegal and not responsive to the issues made, is too general, and for that reason, may be disregarded and overruled by the court.—Margrave vs. Ausmuss, 561.

8. *Testimony—Objections to not preserved, presumed correct.*—Where an objection to evidence is not preserved, the action of the court overruling it is presumed to be correct.—*Id.*

9. *Evidence, objections to—Motions for a new trial—Bill of exceptions, etc.*—Where objections to testimony are not incorporated in a bill of exceptions, and the attention of the court is not called to them, on motion for a new trial, they will not be considered in the Supreme Court.—*Id.*

See Judgment, 9; Mechanics' Lien, 5; References.

PRACTICE, CRIMINAL.

1. *Criminal law—Indictment—Motion in arrest—Allegation that act was done feloniously.*—An indictment under the statute (Wagn. Stat., 462, § 5,) for killing a bull, which fails to allege that the act was done "feloniously," is defective and subject to motion in arrest.—State vs. Deffenbacher, 26.

2. *Criminal law—Jury, challenges of.*—In a trial for murder, defendant is entitled, under the statute (Wagn. Stat. 1102, § 4,) to a full panel of forty qualified jurors before he can be compelled to make his peremptory challenges.—State vs. McCarron, 27.

3. *Criminal law—Murder—Evidence—Testimony of wife for co-defendant of husband.*—Where two persons are jointly indicted for murder, and they are tried separately, the wife of one is a competent witness for the other.—*Id.*

PRACTICE, CRIMINAL.—Continued.

4. *Criminal law--Indictment—Fee of Prosecuting Attorney.*—On an indictment for disturbing the peace, the Circuit Attorney is entitled to no more than one fee of five dollars, although the indictment contains more than one count and more than one fine is assessed. (Wagn. Stat., 619, § 2, claues 3.)—State vs. Peck, 111.

5. *Practice, criminal—Writ of error, when allowed in criminal cases.*—When a defendant has been tried and acquitted, the State is not entitled to a writ of error; but on all other final judgments or indictments, the writ is allowed.—*Id.*

6. *Criminal law—Dying declarations—When admissible as evidence.*—In order to render dying declarations admissible in evidence, it must appear that the person making them was under the belief that his dissolution was near at hand, and that he had abandoned all hope of recovery. (State vs. Simon, 50 Mo., 370, affirmed.)—State vs. McCannon, 160.

7. *Practice, criminal—Instructions—Dying declarations—Credit to be attached to, to be determined by the jury.*—An instruction in a murder trial, that the dying declarations of the person killed as to the circumstances which produced his death, should receive the same credit as his testimony if taken under oath, would be erroneous. The only province of the court is to determine the admissibility of such declarations. The degree of credit to be attached to them should be left to the jury to determine.—*Id.*

8. *Practice, criminal—Motion in arrest, etc.—No plea entered.*—Where the accused in a criminal trial puts in no plea, and a plea of not guilty is not entered in his behalf, it is error, for which motion in arrest will lie. But in granting the motion in arrest, the court has no right to enter a judgment discharging the prisoner. The proper course in the premises would be to set aside the judgment and order a new trial on the indictment.—State vs. Koerner, 174.

9. *Practice, criminal—Error, writ of—Appeal—Indictment—Motion to quash.*—When a motion to quash an indictment is sustained in the lower Court, the State can bring the case to this court by writ of error or appeal. If an appeal is taken, the defendant may be held in custody or required to give bail: if a writ of error be resorted to, he must be discharged, and if the case is reversed and remanded for trial, he may be again arrested on a writ issued for that purpose.—State vs. Cunningham, 479.

10. *Costs, criminal—Indictment—Sentence to a county jail—Costs paid by county.*—Under an indictment for murder, defendant was found guilty of manslaughter in the third decree, and sentenced to imprisonment for one year in the penitentiary. Afterward the verdict having been set aside, and a new trial granted, he pleaded guilty to manslaughter in the third degree, and was sentenced to confinement in the county jail, and to a fine of one hundred dollars. The prisoner being insolvent, held that the county was liable for all the costs. (See W. S., pp. 348-349, §§ 1, 2.)—State *ex rel* Simms vs. Carpenter, 555.

PRACTICE, SUPREME COURT.

1. *Practice—Supreme Court—Exception, etc.*—The Supreme Court will not examine law points not raised by instruction or exception in the court below.—State vs. Flentge, 141.

2. *Practice, civil—Demurrer, waiver, etc.*—A party failing to except on demurrer overruled, and answering over, cannot afterward raise the points involved in the demurrer, before the Supreme Court.—Highley vs Noell, 145.

3. *Practice, civil—Supreme Court—Appeal—General exceptions, effect of.*—A general statement at the end of a bill of exceptions, that to all the rulings, orders and judgments of the court the defendant excepted, is insufficient and will not be noticed by the Supreme Court. The exception must be saved to the specific rulings in the progress of the cause.—Harrison vs. Bartlett, 170.

Practice, civil—Supreme Court—Judgment—Writ of Error.—Where the record shows no judgment of the court below, a writ of error will be dismissed.—Silvey vs. Sumner, 199.

PRACTICE, SUPREME COURT.—Continued.

5. *Practice—Evidence—Weight of.*—In civil law cases where there is a conflict of evidence, the verdict of the jury will not be disturbed by the Supreme Court.—Moore vs. Davis, 233.

6. *Practice—Supreme Court—Appeal—Affidavit.*—Where the record fails to show that the appellant has filed the affidavit for an appeal required by the statute, the appeal will be dismissed.—Clelland vs. Shaw, 440.

7. *Practice—Supreme Court—Exceptions, none taken—What errors examined.*—Where no exceptions are taken at the trial, or saved to the rulings of the Court, only such errors will be examined on appeal as appear on the face of the record.—State *ex rel etc.* vs. Sullivan County Court, 522.

8. *Practice—Supreme Court—No final judgment, etc.*—An appeal brought to the Supreme Court without any final judgment will be dismissed.—Nobles vs. Spaulding, 571.

See Practice, Civil—Trials, 4, 9.

PROCESS; See Attachments, 6; Corporations, 5, 6; Judgments, 3, 4; Justices' Courts, 4, 5; Order of Publication; Railroads, 9.

PUBLIC ADMINISTRATOR; See Administration, 12.

R.

RAILROADS.

1. *Railroad, subscription by county for—Notice—Injunction, etc.*—Where, under the act of March 15, 1870, (Wagn. Stat., 2d ed., 321 *a*,) a County Court ordered a special election to vote on a proposition to subscribe to the capital stock of a railroad, but no sufficient notice was given for the election; *held:*

1. That an assessment against the landlords of the county, to meet the subscription ordered by the vote, would be unauthorized by law.

2. That if the assessment had been warranted by law, the sheriff could not collect it under that statute by levy upon and sale of real estate; and that injunction would lie to restrain the officer from making such sale.—McPike vs. Pew, 63.

2. *Lands—Condemnation of, for railroads—Trespass.*—In proceedings for the condemnation of land for railroad purposes, the reception by the owner of the land, of the money allowed by the commissioners on the condemnation, is not a waiver of a trespass committed by the unauthorized entry and occupancy by the agents of the road before the condemnation of the land had been perfected.—Powers vs. Hurmert, 136.

3. *Railroads—Fences erected along line of road within railroad lands—Construction of statute.*—Under the act touching railroad companies (Wagn. Stat. 310, § 43.) a railroad corporation is liable to an adjoining owner for fences erected by him in pursuance of that section, notwithstanding the fact that such fences were erected nearer the track than the outer boundary of the land belonging to the road. Such an erection without other acts amounting to a claim of ownership, would not constitute an appropriation of the company's land outside the fence.—Marshall vs. St. Louis Iron Mountain Railroad Company, 138.

4. *Railways—Mo. Pacific, ordinance 1865, imposing tax on road—Act Feb. 10, 1864, etc., not a contract limiting taxing power.*—The Pacific Railroad Company of Missouri is not exempt from the tax of ten or fifteen per cent. imposed upon it by the ordinance of April 8th, 1865. (Gen. Stat. 1865, p. 52.) Nor does the act of Feb. 10, 1864, (Sess. Acts 1863-4, p. 50) amount to such a contract, as limits the right of the State to impose the tax. (North Missouri R. R. Co. vs. Maguire, 49 Mo., 490, affirmed).—Pacific R. R. vs. Maguire, 142.

5. *Railroad, Osage Valley—Condemnation—Refusal of owner to relinquish land.*—In proceedings to condemn land for the "Osage Valley and Southern Kansas Railroad Company," under the act of 1857, (Sess. Acts 1857, pp. 59, 63,) no title to the land will pass unless it appear affirmatively from the record that the owner refused to relinquish his right of way to the company.—Ells vs. Pacific Railroad, 200.

RAILROADS.—Continued.

6. *Railroad, suit against—Residence of—Construction of statute.*—Under a proper construction of the statute (Wagn. Stat., 847, § 3) for the purpose of bringing action, the residence of a railroad corporation is in any county through which its lines of road passes, and in which it has an agent upon whom process can be served.—Stavens vs. Pacific Railroad Company, 308.

7. *Railroads—Freights—Transportation—Pressure of business—Inadequacy of rolling stock.*—Where, by reason of unusual pressure of business, the rolling stock of a railroad is inadequate for the transportation of freight, the company may decline to receive it, without incurring any liability; but where the freight is received and shipped, the railroad must forward itwithout delay or answer for damages caused thereby. And in such case the measure of damages will be the difference in the price of the goods when they ought to have been delivered, and when they were actually received at their place of destination.—Faulkner vs. Pacific Railroad Company, 311.

8. *Railroads—County subscriptions to—Vote of people as to—Constitution, etc.*—The charter of the St. Joseph & Iowa Railroad Company, (Sess. Acts, 1856–7, pp. 107, 108,) authorized it to establish branches, and receive county subscriptions, although the counties subscribing had not been empowered thereto by a vote of the people. Article 11, section 14, of the present constitution was not intended to retroact so as to have any controlling application to laws in existence when that instrument was adopted.—State, *ex rel., etc.*, vs. County Court of Sullivan County, 522.

9. *Railroads—Directors, service upon in certain suits not exclusive of common methods.*—In suit against a railroad company under the statute (§ 38, p. 310, W. S.,) for failure to ring a bell or sound a whistle before its train reached acrossing, service of summons made upon a station agent of the company would be sufficient The direction given in the statute, (W. S., p. 310, § 42,) viz: that "suit may be commenced by serving the summons on any director," etc., is permissive and additional to the common mode of service and not mandatory or exclusive of other methods named in the law.—State, *ex rel., etc.*, vs. H. & St. J. R. R. Co., 532.

10. *Railroads, sale of—Act touching—Constitutionality of opinion of Supreme Court.*—The question as to the constitutionality of the sale of the North Missouri and that of the Missouri Pacific Railroads under the respective acts of March 17th, 1868, and March 31st, 1868, concerns the property rights of the State and the vested rights of individuals and corporations, and cannot be passed upon by the Supreme Court in response to resolutions relating thereto by the Legislature.—In the matter of the North Missouri Railroad, 586.

See Callaway County Bonds, Damages; Lathrop, Town of; Saline County Bonds.

RECOGNIZANCE; See Homestead, 1.

RECORD; See Evidence, 10; Judgments, 1.

REFERENCES.

1. *Referee—Report of, set aside, when.*—To authorize a court to set aside a report made by a referee, there ought to be at least evidence that the finding was unjust, or an affidavit of merits by the party attacking the report.—Kelley vs. Blackledge, 113.

REPEAL; See Statute; Construction of, 3, 4.

REPLEVIN.

1. *Replevin—Damages and costs should be estimated in the same suit.*—Where judgment is against plaintiff in a replevin suit and defendant fails to have his damages asessed in that proceeding, he cannot afterward bring his separate action against plaintiff and his sureties for the amount of damages suffered. The statute (2 W. S., p. 819, § 15,) contemplated that when a replevin suit was prosecuted to final judgment, all questions of value, damages and costs should be disposed of in the same proceeding.—White vs. Van Houten, 577.

RES ADJUDICATA; See Judgments.

RESIDENCE; See Corporation, 4, 5; Railroads, 6.

REVENUE.

1. *Collector, bond of—Motion for judgment, form of.*— In a motion for judgment against a collector and his sureties, under the statute, for moneys due the State (Wagn. Stat., 1209, § 128), the motion should describe the official character of the collector, the specific collections made by him, and his default, and the fact that those sought to be charged are sureties on his official bonds. But it need not set out the bond in detail. In such case the formalities of ordinary pleading are not required.—Mississippi County vs. Jackson, 23.

2. *Collector, action on bond of—Defenses—Illegal collection—Estoppel.*—A county collector is estopped from setting up, as a defense to an action on his bond therefor, that he acted illegally in collecting moneys, and for that reason is not officially responsible.—*Id.*

3. *Revenue—County jails—Taxes may be levied for.*—County Courts may levy taxes for the building of county jails. The statute (Wagn. Stat. 402) contains no provision which forbids such levy.

4. *Injunction—Sale of land—Cloud on title.*—The sheriff will be enjoined from the sale of land for non-payment of taxes, although the assessment be illegal, where a cloud will thereby be thrown upon the title. (Leslie vs. St. Louis, 47 Mo., 474).—McPike vs. Pew, 63.

5. *Railroad, subscription by county for—Notice—Injunction, etc.*—Where, under the act of March 15, 1870 (Wagn. Stat., 2d ed., 321 *a*,) a County Court ordered a special election to vote on a proposition to subscribe to the capital stock of a railroad, but no sufficient notice was given of the election; *held:*

1. That an assessment against the landholders of the county, to meet the subscription ordered by the vote, would be unauthorized by law.

2. That if the assessment had been warranted by law, the sheriff could not collect it under that statute by levy upon and sale of real estate; and that injunction would lie to restrain the officer from making such sale.—*Id.*

6. *Railways—Mo. Pacific, ordinance 1865, imposing tax on road—Act Feb. 10, 1864, etc., not a contract limiting taxing power.*—The Pacific Railroad Company of Missouri is not exempt from the tax of ten or fifteen per cent. imposed upon it by the ordinance of April 8th, 1865 (Gen. Stat. 1865, p. 52.) Nor does the act of Feb. 10, 1864, (Sess. Acts 1863–4, p. 50) amount to such a contract, as limits the right of the State to impose the tax. (North Missouri Railroad Company vs. Maguire, 49 Mo., 490, affirmed).—Pacific Railroad vs. Maguire, 142.

7. *Revenue—Tax Deed—Sale, notice of, etc.*—A tax deed given by the Register of lands, which recites that the lands therein described "were advertised according to law," but contains no further recital of notice of sale, is void on its face.—Yankee vs. Thomspon, 234.

8. *Special tax-bills—Work not fully completed when bills made out but completed when suit brought—Tax-bill valid.*—In a suit on a special tax-bill for macadamizing done in front of the property of defendant, where it appeared from the evidence that although the tax-bills were certified before the contractor had fully completed his whole work on the street, yet it was also shown that in a fortnight after the bills were so certified, and before the suit was brought; the entire work was completed. *Held*, that the law was substantially complied with, and the property was properly chargeable.—Kiley vs. Cranor, 541.

See St. Charles, City of, 1.

REVERSIONS; See Donations to charitable uses, 1.

ROADS.

1. *Officers, liability of—Courts, County—Jurisdiction—Roads, opening of—Obedience to mandate.*—When a county court has jurisdiction of the subject matter of opening roads, its oreer will generally be a protection to an overseer acting under its command; previous irregularities cannot affect him.—Patten vs. Weightman, 432.

2. *Officers, liability of—Courts, mandate of—Mode of execution.*—The order of a Court of competent jurisdiction, will protect an officer in its legal and proper execution, but not in recklessly and wantonly injuring others.—*Id.*

ROADS.—Continued.

3. *Proceedings, summary—Rights of third parties—Notice to—Legal implications.*—In summary proceedings, where the rights of third parties are involved, the law always implies that they shall have reasonable notice to prepare for the protection of their rights.—*Id.*

4. *Roads, public—Changing and vacation of—Court, County—Statutory proceedings.*—Before a public road can be vacated by the opening of a new road, in accordance with the statute for changing and vacating roads, the County Court must be satisfied that the new road is open and in good condition, and must have made an order vacating the old road. (2 W. S., 1229, § 58.)—Phelps vs. Pacific R. R., 477.

S.

ST. CHARLES, CITY OF.

1. *St. Charles—Charter of—Ordinance on wagons, etc.*—So much of the ordinance of the city of St. Charles requiring a license tax for wagons used for pay, as attempted to impose a tax upon wagons of outside residents engaged in hauling into and out of the city, was void as not being authorized by the charter of that city, and the Legislature could give the City Council no authority to pass such an ordinance. The tax being upon outside citizens and for the benefit of those living in the city, would be in effect taking property for private use; that is, for the use of a particular community of which the outside citizens form no part.—City of St. Charles vs. Nolle, 122.

ST. JOSEPH AND IOWA R. R. CO.; See Railroads, 8.

SALES.

1. *Sale—Delivery of possession—Bill of sale, etc.*—The title to goods and chattels passes with delivery of possession under a contract of purchase. A bill of sale subsequently executed is merely evidence of the transfer of title, and not at all necessary to its completion.—Gatzweiler, to use, etc., vs. Adams' Admr., 47.

2. *Mortgage—Sale under during session of County Court—Purchaser at.—Ejectment—Color of title—Defense of.*—A sale on a judgment of foreclosure by the Circuit Court, cannot be made during a session of the County Court, and, if so made, would be void. But a purchaser at such sale would nevertheless hold under color of title, and may, in suit in ejectment brought against him, set up the forfeited mortgage to protect his possession against all except the mortgagee and those claiming under him on a regular foreclosure sale.—Jackson vs. Magruder, 55.

3. *Sales, inadequacy of price, etc*—Inadequacy of price taken by itself is not sufficient ground for setting aside a sale of land, but, when coupled with other facts it is a circumstance entitled to consideration.—Wagner vs. Phillips, 117.

4. *Lands, sale of—Bidders kept away—Competition repressed, etc.*—Where evidence shows that by the acts, connivance and representations of a purchaser, bidders were kept away from the sale of certain land; that competition was repressed when the sale took place, and that, except for these practices, the land would have brought a price greatly in excess of that actually realized, the sale will be set aside—*Id.*

5. *County Court—Execution and sale of lands made during vacation of Circuit Court.*—Under an execution issued from the County Court on a judgment of the County Court given for the principal and interest of a school debt under the statute of 1855, (see R. C., 1855, p. 14, 25, §§ 27, 29 and 30,) a sale of land made during the session of the County Court, but while the Circuit Court was not in session, would be void either in a direct or collateral proceeding.—McClurg vs. Dollarhide, 347.

See Administration, 2, 3, 5, 13, 14, 15; Guardian and Ward, 2, 3, 4, 5; Land and Land Titles, 3, 4; Mortgages and deeds of Trust, 3; Partition, 2, 3, 4; Revenue, 7; Sales, U. S. Marshal; Sheriff's sales.

SALES, U. S. MARSHAL'S.

1. *Lands and land titles—Sales by United States Marshal under judgments at law.—Must be made at a term of the Circuit Court—Act of Congress regulating process in United States Courts (1828).*—Under the act of Congress passed May 19th, 1828, (4 U. S. Stat. at Large, 288, § 3), which provided that writs of execution and other final process issued on judgments and decrees rendered in any courts of the United States, and the proceedings thereupon should be the same, except their style, in each State, as were then (1828,) used in the courts of such States, the United States courts have no right to make any regulations for the government of their Marshals in conducting sales under executions at law, different from those fixed by the State laws. There never has been any law of this State, authorizing execution sales of real estate to be made in vacation of the Circuit Court, and during a session of a County Court; but our laws have always required such sales to be made during a session of the Circuit Court, excepting under acts creating certain Courts of Common Pleas. It is essential to the validity of such sales, that they should be made during the session of the proper court, and a violation of this rule would render the sale void, not only in a direct, but also in a collateral proceeding.—Merchants' Bank vs. Evans, 335.

2. *Execution Sales—U. S. Courts—Order of Court to execute deed of land at a term subsequent to the sale—Relation—Rights of third parties.*—An order of court directing the successor of a Marshal who had made a sale, to execute a deed to the purchaser, is simply an administrative, not a judicial act, and if made at a term subsequent to the sale, although it would relate as to the parties, to the time of the sale, it would not operate to cut out the intervening rights of a stranger without notice.—*Id.*

SALINE COUNTY BONDS.

1. *Injunction—Public corporations—Power of the State to restrain from the commission of unlawful acts.*—It is competent for the State, acting through its authorized officers, to maintain proceedings by injunction to restrain public corporations from doing acts in violation of the constitution and laws of the State. Section 24 of the statutes concerning Injunctions, (W. S., 1032,) which provides that "the remedy by injunction or prohibition shall exist in all cases where injury to real or personal property is threatened, and to prevent the doing of any legal wrong whatever, whenever, in the opinion of the court, an adequate remedy cannot be enforced by an action for damages," applies to such cases.—State *ex rel* etc., vs. County Court of Saline County, 350.

2. *Railroads—Louisiana and Missouri River Railroad—Charter—Amendments—Construction—Constitution.*—The charter of the Louisiana and Missouri River Railroad Company, which was granted in 1859, authorized it to construct a railroad by a certain designated, route "to the Missouri River at the most eligible point," and provided that it should "be lawful for the County Court of any county in which any part of the route of said railroad may be," to subscribe to the stock of said company. The new constitution, which went into effect in July 1865, provided that "the General Assembly shall not authorize any county, city or town to become a stockholder in, or to loan its credit to any company, association or corporation, unless two-thirds of the qualified voters of such county, city or town at a regular or special election assent thereto." In 1868 the General Assembly passed an act, claimed to have the effect of amending the original charter, and authorizing the extension of the road to a point beyond the Missouri River, through counties south of the river not on the route of the road, as originally chartered. *Held*, that even if the act of 1868 was valid, and authorized such extension, yet, as the counties through which the extended part of the route lay were not on the route as designated in the original charter, they were bound by the provision quoted of the constitution, and were not authorized by the provisions of the charter to subscribe to the road, without submitting the question to a vote of the people. Such a construction would give to them powers prohibited by the constitution, which they did not possess at the time of its adoption.—*Id.*

SALINE COUNTY BONDS.—Continued.

3. *Acts of General Assembly—Title—No part of act—Must express all subjects of act—Parts of act not expressed in title, void—Special Legislation.*—An act of the General Assembly was entitled "an act to amend an act entitled an act to incorporate the Louisiana and Missouri River Railroad Company, by increasing the amount of the capital stock of said company, defining more explicitly the power of the Board of Directors to fix the Western terminus of the road, authorizing the location and construction of a branch road, and conferring upon said Board, the necessary powers to carry into effect the several objects contemplated by this charter; and also by striking out sections 11, 18, 27, 30 and 31 of said act." The act itself did not speak of the repeal of the original act, or any part of it, or any modification or amendment of it, nor did it mention the original act at all. *Held,* that said act could not create a new corporation under the prohibition in the constitution against special legislation; that the title is no part of the act, and that the language of its title alone could not operate as a repeal or amendment of the original act; and that such parts of the act as are not expressed in the title are void.—*Id.* PER SHEPLEY, Special Judge.

4. *Injunction—Public corporations—Power of State through its officers to interfere.*—Where the State in its corporate character and capacity, has no interest in the litigation, its interference to prevent the commission of an unlawful act by a public corporation, can only be permitted on the ground that the Attorney General or Circuit Attorney is legally authorized to interfere in all cases where private persons are held incompetent to sue, and where the rights of the whole people or any considerable number of them are in danger from the unlawful acts of persons acting or assuming to act under color of lawful authority or otherwise. Such interference under any other circumstances is not authorized by our statutes, which define the duties of the Attorney General and Circuit Attorney, nor is it warranted by Common Law.—*Id.* PER WAGNER, Judge, dissenting.

5. *Acts of General Assembly—Titles of acts—Subject expressed in title—Constitution.*—Under the provisions of the constitution of this State, that no law enacted by the General Assembly shall relate to more than one subject, and that subject should be expressed in its title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not so expressed; (Const. Mo., Act IV, § 32,) an act without a title would manifestly be a nullity, and therefore it follows, that the title forms and constitutes a part of the act, and if the title of an original act be sufficient to embrace the provisions contained in an amendatory act, it will be good, and it need not be inquired whether the title of the amendatory act would of itself be sufficient.—*Id.*

SCHOOLS AND SCHOOL LANDS.

1. *School law—Teachers, employment of—Board of directors—Contracts of, for succeeding year.*—A board of school directors have no power to contract for the services of a teacher after their successors in the school board have been elected and qualified, even though the contract of the old board be made before the commencement of the next school year, *i, e.,* before the third Saturday of April. (Sess. Acts 1870, p. 158, § 98.) The assumed action of the old directors in such a case would be *ultra vires* and void —Loomis vs. Coleman, 21.

2. *Swamp Lands exempt from liability of county on ordinary indebtedness.*—The swamp lands donated to the State of Missouri, under the act of September 28, 1850, and donated to the several counties by that of March 27, 1868, are held for school purposes only (see act last named, § 8,) are exempt from any ordinary liability for county indebtedness.—State, *ex rel.,* Robbins vs. County Court of New Madrid County, 82.

3. *County Court—Execution and sale of lands made during vacation of Circuit Court.*—Under an execution issued from the County Court on a judgment of the County Court given for the principal and interest of a school debt under the statute of 1855, (see R. C. 1855 p. 1425; §§ 27, 29 and 30) a sale of land

SCHOOLS AND SCHOOL LANDS.—Continued·

made during a session of the County Court, but while the Circuit Court was not in session, would be void either in a direct or a collateral proceeding.—McClurg vs. Dollarhide, 347.

4. *Dower—Contract for purchase of land—Possession—Seizin-Vendor's lieu, etc.*—Certain school lands were sold by order of the County Court; the purchaser giving his note to the county for the purchase money and receiving the usual certificate of purchase. (Wag. Stat., 868, § 7.) A. bought the land from the original purchaser, lifted the note and substituted his own. He died in possession, leaving the whole of the note still unpaid. At administrator's sale, B. purchased the land and paid the amount of a judgment obtained on the note of A. *Held*, that B. might be subrogated to the rights of the county, and enforce the vendor's lien against the land. But that the title thereto would remain in the heirs of A. subject to be defeated by sale under the vendor's lien; but that aside from such divestiture, there was in A., an equitable seizin, such as would entitle his widow upon payment out of his assets of the amount of the note, to her dower in the land under § 1 of the dower act. And this right of dower would still remain notwithstanding the fact that no money had been paid by the deceased husband to the county, and no sale had been made by the county to him as contemplated by §§ 2, 3, of said act.—*Id.*

SCIRE FACIAS; See Judgment, 8; Justices' Courts, 3, 4, 5.

SEPARATE ESTATE; See Husband and Wife, 3.

SERVICE· See Attachment, 6; Judgment, 2, 4; Justices' Courts, 4, 5; Order of Publication; Process.

SEWERS; See Damages, 4, 5.

SHERIFFS; See Executions, 1; Justices' Courts, 5; Mortgages and Deeds of Trust, 2.

SHERIFF'S SALES.

1. *Sheriffs' sales—Purchaser, liability of—Contract.*—A. bought property at a sheriff's sale, but the next morning informed the sheriff that he bought the property as agent for B., when the sheriff entered the name of B. on the sale book as purchaser, with a memorandum of the facts. *Held*, that the contract of sale and purchase was complete when the bid was accepted and entered on the sale book, and A. was liable for the purchase money.—Gray vs. Case, 463.

SPECIAL LEGISLATION; See Constitution of Missouri, 1; Court, Jasper Common Pleas.

SPECIAL TAXES; See Revenue, 8.

SPECIFIC PERFORMANCE.

1. *Action for Purchase Money—Special Verdict—Specific Performance—Judgment for, may be corrected, when.*—In suit by the vendor of certain lands, against the vendee thereof for a portion of the purchase money, plaintiff prayed for a decree ordering defendant to pay a portion of the amount to a third party. A special verdict and judgment were rendered accordingly. *Held*, that the suit was purely a legal one and not an action for specific performance. But that the error was an informal one and might be corrected on application, to the court, by the substitution in place of the special decree, of a general judgment for the amount ascertained by the verdict.—Page vs. Arnold, 158.

STATUTE, CONSTRUCTION OF.

1. *Acts of General Assembly—Title—No part of act—Must express all subjects of act—Parts of act not expressed in title, void—Special Legislation.*—An act of the General Assembly was entitled "an act to amend an act entitled an act to incorporate the Louisana and Missouri River Railroad Company, by increasing the amount of the capital stock of said company, defining more explicitly the power of the Board of Directors to fix the Western terminus of the road, authorizing the location and construction of a branch road, and conferring upon said Board, the necessary powers to carry into effect the several

STATUTE, CONSTRUCTION OF.—Continued.

objects contemplated by this charter; and also by striking out sections 11, 18, 27, 30 and 31 of said act." The act itself did not speak of the repeal of the original act, or any part of it, or any modification or amendment of it, nor did it mention the original act at all. *Held*, that said act could not create a new corporation under the prohibition in the constitution against special legislation; that the title is no part of the act, and that the language of its title alone could not operate as a repeal or amendment of the original act; and that such parts of the acts as are not expressed in the title are void.—State vs. Saline County Court, PER SHEPLEY, Special Judge, 350.

2. *Acts of General Assembly—Titles of acts—Subject expressed in title—Constitution.*—Under the provisions of the constitution of this State, that no law enacted by the General Assembly shall relate to more than one subject, and that subject should be expressed in its title; but if any subject embraced in an act be not expressed in the title, such act shall be void only as to so much thereof as is not so expressed; (Const. Mo. Art IV. § 32.) an act without a title would manifestly be a nullity, and therefore it follows, that the title forms and constitutes a part of the act, and if the title of an original act be sufficient to embrace the provisions contained in an amendatory act, it will be good, and it need not be inquired whether the title of the amendatory act would of itself be sufficient.—*Ib.* PER WAGNER, Judge, Dissenting.

3. *Construction of statute—Repeals by implication, etc.*—The settled rule of construction is, that if by any fair interpretation, all the sections of the law bearing on a given topic can stand together, then there is no repeal by implication.—McVey vs. McVey, 406.

4. *Construction of statute—General affirmative statute does not abrogate particular one, except, etc.*—A later statute which is general and affirmative, does not abrogate a former one which is particular, unless negative words are used, or unless the two acts are irreconcilably inconsistent or repugnant.—*Id.*

ADMINISTRATION, 3, (Sess, Acts, 1857, p. 26), 4 (Wagn. Stat. 122, § 13), 11 (Wagn. Stat. 122, § 8), 13 (Wagn. Stat. 97, § 29).
CALLAWAY COUNTY BONDS.
CORPORATIONS, 5, (Wagn. Stat. 294, § 2).
COSTS, 1, (Wagn. Stat. 342, 343), 2 (Wagn. Stat. 384-9, §§ 1, 2).
COURTS, COUNTY, 1, (Gen. Stat. 1865, 290), 2 (R. C. 1855, 534-5, § 15, Wagn. Stat. 440, § 7).
COURT, JASPER COMMON PLEAS, 1, (Sess. Acts. 1869, p. 170; COURT OF MO. ART. 4, § 27), 2 (COURT OF MO. ART. 2, § 13, *Id.* ART. 6, § 1; Sess Acts 1870, p. 200, § 15).
DOWER, 3 (W. S. 868, § 7; *id.* 538, §§ 1, 2, 3), 4, 5, 6, (W. S. 88, § 35), 7 (W. S. 540, § 11).
ESCHEATS, 1 (W. S. 584; Rev. Laws, 1825, 35).
EVIDENCE, 7 (W. S. 1372, § 1).
GUARDIAN AND WARD, 2 (R. C. 1855, 826-7, §§ 25, 26, 27).
HOMESTEAD, 1 (W. S. 697, § 1).
INJUNCTION, 1 (W. S. 1030, § 10), 5 (W. S. 1032, § 24).
JEOFAILS, 1 (W. S, 1036, § 19).
JUSTICES' COURTS, 8 (W. S. 850, § 21).
KANSAS CITY, 1 (Sess. Acts 1867, p. 18, § 12).
LANDLORD AND TENANT, 1 W. S. 880, § 18; *id.* 192, § 52).
LIMITATIONS, 3 (W. S. 919, § 18).
MECHANICS LIENS, 1 (W. S. 1004, § 12).
MORTGAGES AND DEEDS OF TRUST, 2 (R. C. 1855, 1554, § 1).
OSAGE VALLEY AND S. K. R. R., 1 (Sess. Acts 1857, pp. 59, 63),
PARTITION, 1 (W. S. 610, §§ 46, 47).
PRACTICE, CIVIL—PARTIES, 2 (W. S. 1000, § 3).
PRACTICE, CIVIL—PLEADING, 4 (W. S. 1036, § 19).
RACTICE, CRIMINAL, 1 (W. S. 462, § 5), 2 (W. S. 1192, § 4), 4 (W. S. 619 § 2, cl. 3).

STATUTE, CONSTRUCTION OF.—Continued.

RAILROADS, 1 (W. S. 1872, 321 *d*), 3 (W. S. 311, § 43), 4 (Gen. Stat, 1865, p. 52; Sess. Acts 1863–4, p. 50), 6 (W. S. 847, § 3), 8 (Sess. Acts 1856–7, pp. 107, 108), 9 (W. S. 310, § 42), 10 (Acts for sale of North Mo. R. R., March 17th, 1868; and Pacific R. R., March 31st, 1868).

REPLEVIN, 1 (W. S. 819, § 15).

REVENUE, 1 (W. S. 1209, § 128), 3 (W. S. 402).

ROADS, 4 (W. S. 1229, § 58).

SALINE COUNTY BONDS.

SCHOOLS, 1 (Sess. Acts 1870, 158, § 98), 3 (R. C. 1855, 1425, §§ 27, 29, 30).

SWAMP LANDS, 1 (Sess. Acts 1868, p. 68, § 8).

Wills, 1 (W. S. 1365, § 9), 3 (W. S. 1368, § 29; *id.* 72, § 13).

STOCKHOLDERS; See Corporations.

STREETS; See Damages, 4, 5.

SUBSCRIPTION; See Callaway County Bonds; Lathrop, Town of; Railroads, 8; Salind County Bonds.

SUMMARY PROCEEDINGS.

1. *Proceedings, summary—Rights of third parties—Notice to—Legal implications.*—In summary proceedings, where the rights of third parties are involved, the law always implies that they shall have reasonable notice to prepare for the protection of their rights.—Patton vs. Weightman, 432.

SUPREME COURT.

1. *Supreme Court, Judges of—Questions propounded by the Legislature—Constitution, construction of.*—The Judges of the Supreme Court have the undoubted right to decide for themselves, whether questions presented for their determination by the Legislature and the occasions on which the questions are so presented, are such as to authorize the rendition of opinions as contemplated by the Constitution. (Art. VI, § 11.)—In the matter of the North Mo. R. R., 586.

2. The Judges can only be called on for opinions touching matters of public concern when the occasion is such as to authorize such a call.—*Id.*

See Practice, civil, Appeal; Practice, Supreme Court.

SURETIES.

1. *Bonds, sureties on—Actions against principal in assumpsit and by subrogation.*—Sureties on a bond cannot join in an action at law against their principal based on an implied assumpsit on his part to refund the amounts so advanced by them.

In suits in equity to be subrogated to the rights of the creditors in collaterals held by him, sureties are allowed to join and must join, because in equity they are jointly interested to the extent of the payments made by each in such collaterals.—Sevier vs. Roddie, 580.

See Bills and Notes, 11; Homestead, 1; Justices' Courts, 7; Revenue, 2.

SWAMP LANDS.

1. *Swamp lands exempt from liability of county on ordinary indebtedness.*—The swamp lands donated to the State of Missouri, under the act of September 28, 1850, and donated to the several counties by that of March 27, 1868, are held for school purposes only (see act last named, § 8), and are exempt from any ordinary liability for county indebtedness.—State *ex rel* Robbins vs. County Court of New Madrid County, 82.

See Land and Land Titles, 1.

T

TRANSCRIPT; See Justices', Courts, 5.

TRESPASS; See Courts, County, 2; Damages, 3; Railroads, 2.

TRUSTS AND TRUSTEES.

1. *Bills and notes—Note given payee for third party, without consideration as to payee—Trusteeship, etc.*—Where it was agreed, at the time of the execution of a note, that either it or its proceeds should go to a third party, in such case the latter would be the substantial creditor; and if the payee gave no consideration for it, he would be a mere naked trustee, and neither he nor his assigns could set up an interest against the real beneficiary.—Callaway vs. Johnson, 33.

2. *Trusts—How may be accepted by trustee, etc.*—When a trust deed contains no covenants to be made and executed by the trustee, it is unnecessary that he should join in the execution of the deed, in order to manifest his intention to accept the appointment. Any act on his part by which he manifests an intent to acquire or exercise any influence in the management of the trust property, will be sufficient. The fact that the trustee shortly after the execution of the trust deed, rented out the trust property, and that when he died the deed was found among his papers, is a strong circumstance from which to deduce an acceptance.—Roberts vs. Moseley, 282.

3. *Use and trust—Property conveyed to separate use of married woman—Death of trustee—Estate vests, how.*—When land is conveyed to a trustee for the sole use and benefit of a married woman, upon his death, the use is immediately executed in her, and if she be dead, then in her legal heirs.—*Id.*

4. *Trustee—Suit by—Mention of beneficiary in caption.*—In a suit by a trustee, it is not necessary that the name of the beneficiary should appear in the caption even, where the trust is an express one.—Philips to use of Tindall vs. Ward, 295.

5. *Husband and wife—Personal property of wife—Declaration of trust by husband.*—All personal property of wife in possession, whether at the time of marriage or afterwards acquired, vests absolutely in the husband, unless conveyed to him or her for her sole and separate use, and he cannot be declared a trustee for his wife by any loose or general remarks made in conversations. To establish such a trust, the evidence must be clear and unequivocal.—Woodford vs. Stephens, 443.

6. *Trusts—Land—Frauds—Statute of.*—When a person buys land with his own money, in order to make him a trustee thereof for any one, such trust under the statute of frauds must be manifested by writing and the evidence must be clear and unequivocal.—*Id.*

7. *Mortgages and Deeds of Trust—Power of sale—Trusts and Trustees—Trust power cannot be delegated.*—A special authority must be strictly pursued; and the office and duties of a trustee being matters of confidence cannot be delegated by him to another, unless an express authority to do so be conferred on him by the instrument creating the trust. He is incapacitated from delegating any duty, unless the power is expressly given, which involves the exercise of any discretion or judgment. Mere mechanical or ministerial duties, as, for example, causing advertisements of sale to be put up, proclaiming the sale at auction, and receiving bids, may be done by others. The particular medium of advertisement, the manner of conducting the sale, the best method of offering the property, and the question of postponement of the sale, are matters regarding which, when they are not prescribed by the instrument under which he acts, special trust and confidence are reposed in the trustee; and they cannot be delegated to an agent.—Bales vs. Perry, 449.

8. *Practice, civil, Parties—Trustee and beneficiary—Agreement between other parties may be sued on by beneficiary.*—A party for whose use a contract or a stipulation in a contract is made, when this fact appears on the face of the contract, may maintain a suit in his own name on such stipulation, and this rule applies as well to simple contracts as contracts under seal. The party in whose name the contract is made, is declared by our practice act to be a trustee of an express trust, and may sue in his own name; (2 W. S., 1000, § 3,) but this does not bar the beneficiary from doing so; a recovery by either would be a bar to an action by the other.—Rogers vs. Gosnell, 466.

See Conveyances, 9; Equity, 1; Husband and Wife, 3, 8; Mortgages and Deeds of Trust.

U.

USES AND TRUSTS; See Donations to Charitable uses; Trusts and Trustees.

V.

VENDORS' LIEN; See Dower, 3; Land and Land Titles, 5, 6.

VERDICT; See Justices' court, 1; Practice, civil—Actions, 1; Practice, civil—Pleading, 4, 5.

W.

WARRANT, COUNTY; See Courts, County, 1; Practice, civil—pleading, 4.

WARRANTY; See Conveyances, 5.

WILLS.

1. *Wills, statute of—Failure to mention children in will, effect of.*—Under the statute (W. S., 1365, § 9) where the children of the testator are neither expressly named in the will, nor so alluded as to show affirmatively that they were in his mind when making it, the presumption is conclusive that they were forgotten.—Witherall vs. Harris, 65.

2. *Practice act—Wills statute of—Bill of exceptions—New trial, motion for.*—The proceeding under the statute of wills is summary, and the practice act does not apply; and no motion for a new trial is necessary.—*Id* (per ADAMS, J.)

3. *Wills—Contests touching, in Circuit Court—Appointment of temporary administration.*—In case of proceedings in the Circuit Court under the statute (W. S., 1368, § 29,) to contest the validity of a will, the Probate Court is authorized to suspend the functions of the executor named in the will, and to appoint a temporary administrator *pendente lite.* (See W. S., 72, § 13.) The authority of the Probate Court is not confined to contests arising in that tribunal.—Rogers vs. Dively, Admr. of Gillis, 193.

4. *Will—Life estate of widows—Sale of land by—Power—Execution of.*—By the terms of the will, a widow was vested with a life estate in all the property of the testator, and with a power to alienate any of it in payment of the debts of the estate, and to defray necessary expenses of the family. The widow also owned a small undivided interest in the land, in fee simple. The will also named her as executrix. *Held,*

1st. In the execution of the power she need not describe herself as executrix. Her power to sell would arise from the general trust reposed in her, and not simply from her position as executrix.

2nd. Conveyance of land by her which contained no reference to the will or the power of alienation conferred by it, or to any thing from which the power might be inferred—would operate to pass only her life estate and her individual undivided interest in the land, and would not execute the power by transferring the fee simple title to the whole land sold, nor would such be the case even if the deed contained covenants of seizin and warranty.—Owen vs. Switzer, 322.

5. *Evidence—Reputation of party to suit as to chastity, when may be inquired into—Wills—Undue influence of beneficiary.*—Evidence as to the chastity of a party to the suit is admissible only where there is an issue directly involving the character of the party, or when it is necessary in order to ascertain the amount of damages, or when it is a matter of fact rendered material by pre ceding evidence. And where it was attempted to set aside a will on the ground of undue influence and control on the part of the beneficiary over the testator, and no issue was made as to the chastity of the devisee, *held* that her chastity was not properly a matter of evidence.—Rogers vs. Troost's Admr., 470.

WITNESSES; See Evidence.